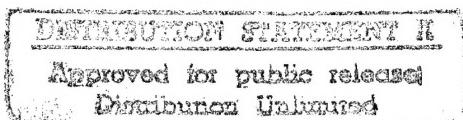




# VETERANS BENEFITS AND JUDICIAL REVIEW

HISTORICAL ANTECEDENTS AND THE  
DEVELOPMENT OF THE AMERICAN SYSTEM



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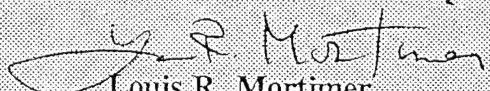
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# **VETERANS BENEFITS AND JUDICIAL REVIEW**

## **HISTORICAL ANTECEDENTS AND THE DEVELOPMENT OF THE AMERICAN SYSTEM**

**A Study Prepared by the Federal Research Division of the Library of Congress  
under an Interagency Agreement with the United States Court of Veterans Appeals**

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## PREFACE

The purpose of this study is to provide a historical survey of the development of veterans benefits and judicial review leading up to the establishment of the United States Court of Veterans Appeals in 1989 to assist the Court in determining its place on a broad historical continuum. The study describes and analyzes the historical antecedents of the United States system of veterans benefits and reviews how those benefits have been adjudicated by heads of state, government officials, legislatures, and judicial bodies. A summary of veterans benefits in the ancient Egyptian, Babylonian, Persian, Greek, and Roman empires is provided as initial background. It is followed by a more detailed review of support to veterans in medieval and modern France, Russia, and Germany. Still more detailed information is provided on the immediate precedent of the American system, which was developed in England and exported, in part, to the North American English colonies in the seventeenth century. Analysis is also provided of the British veterans benefit and adjudication system as it continued to develop after the American Revolution. The rest of the study details the development of the American system of veterans benefits and the judicial-review role of various governmental entities during the colonial period up to 1776. The role of the Federal and state governments in administering and adjudicating benefits from 1776 to the establishment of the United States Court of Veterans Appeals under the provisions of the Veterans Judicial Review Act (Public Law 100-687) of 1988 concludes the study. Maps, illustrations, and appendices are included to provide additional insight.

Various members of the staff of the Federal Research Division of the Library of Congress contributed to the preparation of this study. Ihor Y. Gawdiak and Walter R. Iwaskiw were the principal authors of the section on Historical and Foreign Antecedents. Holly Snyder was the principal author of the sections on Colonial America and the United States and prepared appendixes B through E. Robert L. Worden served as project manager and contributed to the writing and preparation of various parts of the study. Marilyn L. Majeska edited the study. Alberta Jones King served as research assistant for the project and David P. Cabitto prepared the maps.

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## **EXECUTIVE SUMMARY**

*Warriors have been rewarded for their service--or their widows and children have been provided support--since the beginnings of organized society. Rewards have been granted in the form of plunder, money, goods, land, assured employment, health care, and special status. From the veterans of Egypt in the third millennium B.C., through the mercenaries of medieval Europe, to veterans in the allied forces who fought in the Persian Gulf region in 1991, governments have compensated military personnel--or their survivors--for loss of life, wounds, injuries, or length of service in defense of the state. Grateful governments have elected to grant some form of compensation or bounty to those who defended it. Such compensation has been given as a gratuity by the state--sometimes offered in advance as an incentive for civilians to enlist--but has not been an inalienable right of the veteran.*

*With treasuries depleted by war or because of faltering state administration, governments could not always provide financial assistance or health care. Disabled veterans were often reduced to begging (some governments even issued beggars' licenses) and they occasionally rose in arms against the government they once defended. Politics, if not open rebellion, were thus introduced into the administration of veterans benefits from an early date. Although in recent centuries such benefits often have been guaranteed by law, military pensions have been subject to claims made by dissatisfied veterans or their survivors leading to remedial legal action or the involvement of judicial authorities. As they became more sophisticated and complex, societies paid more attention to the situation of the veterans and their dependents, and many societies--Britain, France, Germany, Russia, and the United States, for example--entered the modern world with a veterans benefit system in place.*

*The United States veterans benefits system has a long and complex history. In the colonial era most colonies each had devised their own means for administering benefits, with the judicial review role varying from colony to colony. The Revolutionary War resulted in a shift of authority away from the states--the former colonies--toward the new central government. Federal circuit courts, initially, and district courts played a prominent role, but as the pension rolls grew so too did the courts' workload and often veterans were left without effective judicial recourse. Starting in 1861, Congress and the Executive assumed increasing roles in the veterans benefit system, leaving comparatively little work for the courts as Congress itself reviewed pension determinations. Without enlarging the role of the courts, Congress reduced its role in the pension system in favor of the Executive branch at the turn of the century. Veterans appeals, however, were adjudicated by the same agency, the Veterans Administration (established in 1930), that granted them. In 1988, after more than thirty years of legislative effort, the United States Court of Veterans Appeals was established to adjudicate veterans claims, thus granting veterans the opportunity for an independent and impartial review.*

## INTRODUCTION

Virtually all nations throughout history have provided some form of reward to war veterans, support for disabled soldiers, and benefits to their dependent survivors. A review of various historical periods and selected countries reveals similarities in how veterans benefits systems evolved, becoming increasingly complex while providing greater rewards for sacrifices made by soldiers (for a list of foreign military pension systems of twenty-five nations in the late nineteenth century, see Appendix A). Veterans benefits have uniformly been viewed by the governments that grant them as a form of gratuity rather than as a right of the veteran. But they have also been thought to be necessary in order to help ensure future willingness of a nation's citizens to serve in defense of the nation. In the past 500 years, veterans benefits have increasingly been protected by law with claims subject to adjudication by *de facto* judicial officials, whether they be the head of state, members of the legislature, executive branch agents, or judges.

The emergence of nations after the sixteenth century brought increasingly destructive wars fought by ever-larger and more powerful armies, resulting in great numbers of disabled veterans seeking government compensation. Pensions were granted, hospitals were built, rehabilitative occupations were provided for, and, in some cases, government begging licenses were issued to veterans. Most of the European states developed similar means of providing for their veterans but in England, with its well-developed democratic traditions, acts of Parliament provided more equitable methods of administering benefits. Those traditions and laws, transplanted to England's North American colonies, were the basis for the American system of veterans benefits. Legislative bodies, some of which were called courts, were the usual organization administering and adjudicating veterans benefits. In turn, colonial mechanisms influenced the new central government of the United States under the Articles of Confederation and the Federal government under the Constitution inaugurated in 1789. Until the Civil War (1861-65), Federal and district courts played a large role in reviewing veterans claims but after 1861 Congress took a larger role in redressing veterans demands, leaving less work for the courts than in the past. The Federal Bureau of Pensions grew in proportion to the huge number of Civil War veterans and their dependents. In the early twentieth century, Congress legislated increasing authority to the Executive branch to review veterans claims; appeals could be made only to the in-house Board of Veterans' Appeals. In the post-World War II era, veterans pressed for an independent review organ, which, after three decades of legislative initiatives, was made a reality in the form of the United States Court of Veterans Appeals, which became operational in 1989.

## HISTORICAL AND FOREIGN ANTECEDENTS

### Ancient World

#### *Egypt, Babylonia, and Persia*

Very early in the development of the civilized world, society recognized that those who protected the state from an external threat deserved special consideration. Historical records indicate that the practice of compensating war veterans and disabled soldiers dates back to antiquity. In the Egypt of the Pharaohs--perhaps as early as 3000 B.C.--soldiers were rewarded for their performance in battle with plots of land, depending on the extent and character of their service.<sup>1</sup> In the ancient Babylonian empire, dating to around 2050 B.C., soldiers were compensated for their services with plunder and tribute exacted from captured cities.<sup>2</sup>

#### *Greece and Rome*

Granting of pensions to veterans was also practiced in ancient Greece. The Greek city states expected all able-bodied male citizens to perform military service. The state, in turn, supported the children of soldiers killed in action and gave preferential treatment and citizenship to foreign soldiers who fought in service to the city state.<sup>3</sup> Solon, a distinguished sixth century B.C. Athenian lawgiver, ordered that "persons maimed in war [be] maintained at the public charge." The Athenian policy of taking care of children of fallen soldiers was clearly enunciated in the famous eulogy by Pericles delivered at the funeral of warriors killed in the First Peloponnesian War (460-451 B.C.) between Athens and Sparta, in which he stated that "their children will be brought up till manhood at the public expence."<sup>4</sup> Greek city states also bestowed other benefits on war veterans and disabled soldiers, as well as on their dependent children. It was a common practice in ancient Greece, for example, to grant freedom to slaves with a distinguished war record.<sup>5</sup> Greece was also the first country to provide public care to disabled soldiers. Soldiers wounded in battle were fed at public expense, and pensions were granted to those who could prove permanent injury.<sup>6</sup>

Rome had a long history of benefits for veterans. In the first century B.C. veteran soldiers (*evocati*)--those who had served sixteen years and were maintained in a reserve status--were exempt

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<sup>1</sup> It was not unusual in Egypt for an entire army to be settled on newly conquered land. See Robinson E. Adkins, *Medical Care of Veterans* (Washington: GPO, 1967), 11.

<sup>2</sup> Adkins, *Medical Care of Veterans*, 16.

<sup>3</sup> Albert F. Sisson, *History of Veterans' Pensions and Related Benefits* (Washington: School of Social Sciences and Public Affairs, The American University, 1946), 1.

<sup>4</sup> See Brian Tierney (ed.), *Periclean Athens: Was It a Democracy* (New York: Random House, 1967), 7-12.

<sup>5</sup> According to Thucydides (471?-?400 B.C.), some 2,000 Spartan serfs were freed at the end of the Peloponnesian War. See W. Durant, *The Life of Greece* (New York: Simon and Schuster, 1939), 70.

<sup>6</sup> Douglas C. McMurtrie, "The Historical Development of Public Provisions for the Disabled Soldier," *Interstate Medical Journal*, 26, No. 109, February 1919.

from routine duties to the army and society.<sup>7</sup> More tangible rewards were expected, however, as charged by an observer during this period, who wrote that "Most... veterans ruined by extravagant living, looked back regretfully to the plunder which past victories had brought them, and longed for civil war."<sup>8</sup> Under the Roman Empire, procedures became more civilized and by A.D. 6 a pension fund had been set up for disabled soldiers and was financed by proceeds from taxes on public sales and the "succession duty." The conquest of what became the Roman Empire necessitated the use of numerous mercenaries, who were rewarded with pay and whatever they could plunder.<sup>9</sup> Some were granted Roman citizenship for themselves, their wives, and sons and were given bronze diplomas as proof. With citizenship came numerous legal rights and privileges, but also duties to the state--such as compulsory municipal service, public works, and market taxes--some of which veterans were exempt.<sup>10</sup>

In Rome, a common means of rewarding soldiers was to bestow land upon the legionnaires who had just conquered it. Historian Thomas Babington Macauley refers to this Roman practice in his 1842 poem *Lays of Ancient Rome*, which recalls the brave stand of Horatius Cocles against the Etruscans on the bridge over the Tiber in 496 B.C.

They gave him of the corn-land  
That was of public right  
As much as two strong oxen  
Could plough from morn till night....<sup>11</sup>

Municipal office was yet another Roman benefit bestowed on the most favored veterans and their descendants. In a move of at least intangible benefit to veterans, Romans also reportedly were the first to establish military hospitals, the earliest dating to the first century A.D. The appearance of early military surgeons also dates to the Roman Empire.<sup>12</sup> Benefits to veterans usually had a statutory basis and, in the fourth century A.D. alone, laws were passed providing grants of tax-free land, stipends for purchasing farm implements and grain, the right to choose legal residence, perpetual exemption from taxes and public service, and the right to possess vacant lands or the exclusive right to income from selected lands despite ownership by absentee landlords.<sup>13</sup>

<sup>7</sup> Michael Grant, *The Army of the Caesars* (London: Weidenfeld and Nicolson, 1974), 81.

<sup>8</sup> Roman historian and politician Sallust (86-34 B.C.), as quoted in Grant, *The Army of the Caesars*, 8.

<sup>9</sup> Pension, which comes from the Latin *pensio* or payment, was not necessarily limited to a monetary reward. See: Llewellyn J. Llewellyn and A. Bassett Jones, *Pensions and the Principles of Their Evaluation* (London: William Heineman, 1919), 1. The Greeks used several means to raise money to pay soldiers or to provide some sort of pension. War taxes were levied occasionally on the rich to provide for soldiers from the lower ranks who could not otherwise afford to serve in the military. In fourth-century B.C. Athens, a pension fund for children of soldiers who had died fighting was financed by lowering the allowance of Athenian cavalry, who were usually recruited from the ranks of the richest citizens of Athens. See Josiah Ober, *Mass and Elite in Democratic Athens* (Princeton: Princeton University Press, 1989), 99-199. Also see Sisson, *History of Veterans' Pensions and Related Benefits*, 1.

<sup>10</sup> Grant, *The Army of the Caesars*, 104, 155; and Hagith Sivan, "On *Foederati*, *Hospitalitas*, and the Settlement of the Goths in A.D. 418," *American Journal of Philology*, 108, No. 4, Winter 1987, 763, 769.

<sup>11</sup> Thomas Babington Macauley, *Lays of Ancient Rome* (Philadelphia: E.H. Butler and Company, 1864), 76.

<sup>12</sup> See Adkins, *Medical Care of Veterans*, 12-13.

<sup>13</sup> Sivan, "On *Foederati*, *Hospitalitas*..." 769-70.

Even in death, veterans found pride not only in their military service to the state, as witnessed by gravestone inscriptions noting their *missio honesta* (honorable discharge), but also in the rewards they received. In several documented cases, gravestones have been found that cited a veteran's status as *honoratus commodis* (honored with a cash award).<sup>14</sup>

Although the first extensive record of public support for war veterans clearly belongs to the Greeks and Romans, neither developed a consistent and continuous policy of compensating disabled soldiers, war veterans, or the families of soldiers killed in action. In most cases, compensations were sporadic measures dependent more often than not on the whim or good will of the ruler. In some cases, pensions and other veteran benefits were discontinued because they fell prey to corruption and abuse.<sup>15</sup>

### **Medieval and Modern Developments**

#### ***France***

In France, as elsewhere in Europe, society was slow to recognize its obligation to disabled soldiers and war veterans. Soldiering during most of the European Medieval Period (from about A.D. 500 to 1500) was considered to be a paid business enterprise. Soldiers sought service in those armies where payment was highest, and they did not expect to be taken care of once their service ended. Therefore war veterans and their dependents fared very poorly in the early Medieval Period. They sought assistance from wealthy individuals, or charitable institutions. The Church, particularly monasteries, provided the bulk of assistance to these unfortunates. Nevertheless, many were not able to secure any assistance and resorted to begging. The number of beggars always increased alarmingly following a war.

The first French ruler to take up the cause of war veterans and disabled soldiers was Phillip II (1180-1223). With the blessing of the papacy, Phillip II founded a hospice for veterans who had participated in the Crusades. Louis IX (1226-70), another crusading French king, established a similar hospice for some 300 crusaders who had been blinded by the desert sun. These first attempts by French kings to provide minimal benefits to disabled soldiers resulted from personal kindness and did not lead to a development of a permanent national policy.<sup>16</sup>

The deterioration of the feudal system, beginning in the fifteenth century, had a considerable impact on veterans. With the rise of standing armies and a professional military establishment, the number of soldiers increased dramatically, leading to a corresponding increase in war veterans and

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<sup>14</sup> Michael P. Speidel, "Cash from the Emperor: A Veteran's Gravestone at Elecik in Galatia," *American Journal of Philology*, 104, No. 3, Fall 1983, 282-86.

<sup>15</sup> See Llewellyn and Jones, *Pensions*, 2-3.

<sup>16</sup> Adkins, *Medical Care of Veterans*, 13.

disabled soldiers. At the same time, there was a pronounced decline in the number of monasteries in Europe. Deprived of a major source of assistance, disabled soldiers and survivors of soldiers killed in battle increasingly resorted to begging and hooliganism. By the end of the sixteenth century, France was inundated with a sullen army of beggars and vagabonds threatening to wreck the country's social order if their demands to be provided with "the means to live at ease" for the rest of their lives were not met.<sup>17</sup>

The growing threat from this destitute segment of French society and the society's increasing awareness of its debt to veterans and disabled soldiers led to renewed efforts by French kings to remedy their plight. Henry IV (1589-1610) established an asylum for disabled soldiers and dependents of soldiers killed in battle. He called this veterans' asylum Maison Royale de la Charité Chrétienne and ordered it to be financed by the "excess revenue in the budgets of French charitable institutions." Henry also established the first French state administrative organization for the care of veterans. A veterans' bureau certified which ex-soldiers and their dependents were eligible for public support. Lack of funds, however, soon led to the collapse of both the veterans' bureau and the asylum. Although Louis XIII (1610-43), Henry's son, attempted to continue his father's policy of support to veterans and founded the Maison des Invalides in 1635 as an asylum for disabled soldiers, his efforts also ended in failure because of lack of funds. The Maison des Invalides never housed any disabled soldiers. Much more successful were the efforts of Louis XIV (1643-1715). He first attempted to control the explosive situation by outlawing begging and ordering beggars to be hanged. He also tried to establish a pension system that rewarded officers much more than enlisted men and required the less severely disabled to perform garrison duty. These measures failed because of violent opposition to them by veterans and enlisted men. Louis XIV pressed on, however. In 1670 he founded the Hôtel des Invalides for the care of disabled and aged veterans and authorized a tax to be levied for its support. Within five years it housed some 4,000 pensioners.<sup>18</sup>

The opening of the Hôtel des Invalides in 1674 was the major step toward developing a comprehensive system of benefits for war veterans and their dependents in France. A century after the first disabled veterans were admitted into Hôtel des Invalides, France was providing some 30,000 veterans annually with benefits that were unprecedentedly generous. Many of these veterans resided at various times in the Hôtel des Invalides, the capacity of which ranged between a normal of 3,000 and an all-time high of 7,000. As many as 70,000 disabled veterans resided in the Hôtel des Invalides between the end of the War of Spanish Succession (1701-15) and the Seven Years War (1756-63). Since the Hôtel des Invalides could not receive all of veterans applying for admission, the French government established an intermediary type of service--between active duty and complete retirement--for the least disabled and infirm soldiers. Soldiers who joined these sedentary units, whose ostensible purpose was to perform guard duty and to free regular troops for combat, were stationed in forts, chateaus, and garrisons. In fact, the sedentary companies were simply a part of the French system of veterans' care. By 1762, there were 150 of these units, absorbing 15,000

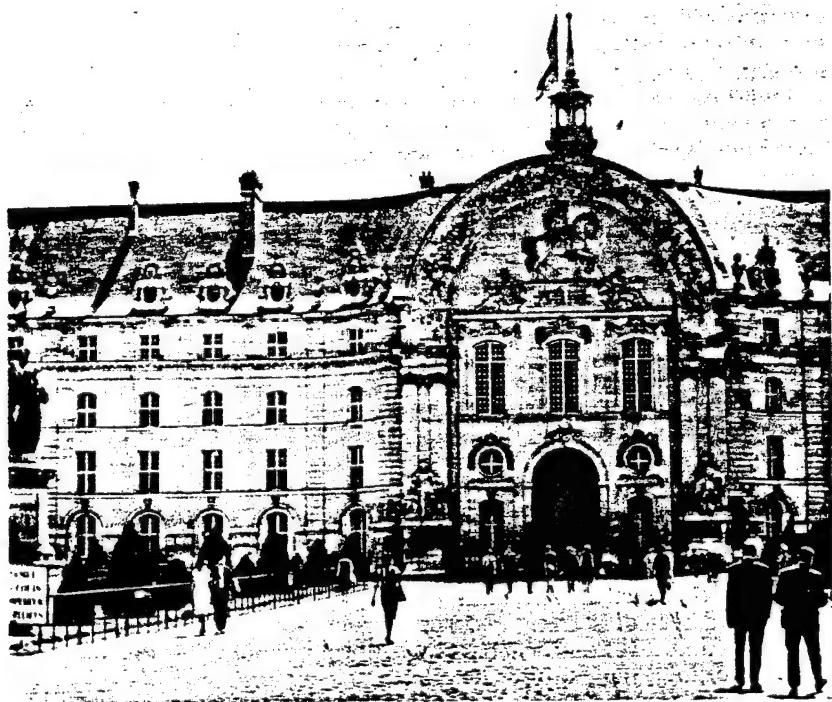
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<sup>17</sup> Adkins, *Medical Care of Veterans*, 14.

<sup>18</sup> Adkins, *Medical Care of Veterans*, 14-16.

**United States Court of Veterans Appeals**

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The Hôtel des Invalides in Paris, opened in 1675 for disabled French veterans.

*Courtesy U.S. Department of Veterans Affairs*

troops.<sup>19</sup>

Although the establishment of the sedentary units alleviated the problem somewhat, the growing number of disabled soldiers soon greatly exceeded the accommodations at the Hôtel des Invalides and the limit set for the number of troops in the sedentary units. As a result, the French Ministry of War instituted in 1764 an "invalid's pension," the first standardized pension system for all disabled servicemen. The invalid pension law was revised first in 1776 and again in 1791, each time increasing the pension of common soldiers and closing the large discrepancy between their pensions and those of officers.<sup>20</sup>

New laws in 1764, 1776, and 1791 greatly improved the lot of wounded and disabled soldiers in France. But they did not, by any means, address all the pressing problems connected with the care of veterans. Two of the most persistent grievances raised by France's men in uniform were the inequality between the benefits granted to disabled officers and those granted to disabled soldiers.<sup>21</sup> Secondly, there was a growing demand that not only disabled soldiers be compensated for their service, but also those who had honorably served their country until retirement. A series of laws passed between 1790 and 1793 redressed these wrongs. For the first time in France's history a rationalized system of retirement pensions for public servants, including the military, was established. In addition, pensions no longer were based on rank of the soldier at the time he left the service and rank-and-file soldiers, not officers, were given first consideration in determining veteran benefits. Finally, a law passed in 1793 granted war widows a pension equal to 50 percent of their husbands' salary. Within a few months that law was amended to raise the widow's pension from 50 percent of the husband's pay to 300 livres regardless of the husband's rank.<sup>22</sup>

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<sup>19</sup> Iser Woloch, *The French Veteran from the Revolution to the Restoration* (Chapel Hill: University of North Carolina Press, 1979), 3-18. The Hôtel des Invalides was the most imposing structure and the most complex social institution in old-regime Paris. It had a larger budget than either the enormous Hospital General or the venerable Hotel Dieu. It was surrounded by a wall manned by a special detached company of invalides. Within the walls it contained its own bakeries, a slaughterhouse, one of the capital's most splendid churches with burial facilities, an infirmary staffed by the Sisters of Charity, a jail, and a facility for the insane. It employed a diverse group of artisans, laborers, functionaries, and professionals who together formed a socioeconomic pyramid.

<sup>20</sup> Woloch, *The French Veteran*, 7-12. Although in the past French officers had received what amounted to a pension in the form of royal largess, henceforth there would be a uniform pension system in France for all wounded veterans who were not admitted to the Hôtel des Invalides or the sedentary units. The 1764 law provided that invalides be retired at full pay after twenty-four years of service and half-pay after sixteen years of service. The full pension of fifty-four livres provided only a meager existence, nevertheless, 12,000 war invalids applied for these pensions in the first year.

<sup>21</sup> Royal pension for nobles had grown at an alarming rate in the last years of the old regime and was based mostly on social favoritism and often was secured under frivolous pretexts. The revolutionary period military expert Edmond Louis Alexis de Dubois de Crancé claimed, with great deal of justification, that "high military rank, jurisdictions, red and blue decorations, and enormous pensions demonstrated the [old regime] government's munificence towards superior officers called to command, while even the means for mere physical subsistence were denied to their impoverished companions in arms." It was not surprising, therefore, that many of the *cahiers* to the Estates General of 1789 called for a reform of the pension system that would be based "on merit, not favor; on rank and length of service, not connections at court." See Woloch, *The French Veteran*, 14-17.

<sup>22</sup> The veteran benefits laws of 1790 to 1793 clearly reflected the spirit and egalitarianism of revolutionary France. Revolutionary war veterans, particularly privates, received substantially higher pensions than those meted to veterans under the old regime. Particularly high benefits were bestowed on the wounded and disabled citizen soldiers, for they were deemed to have made the greatest sacrifice on behalf of their country. See Woloch, *The French Veteran*, 77-89.

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In spite of the generosity of the new military pension laws, the plight of veterans soon worsened. For twenty-two consecutive years, between 1792 and 1814, France was involved in large regional wars that became increasingly more massive and destructive. As a consequence, the number of wounded and disabled soldiers, as well as the number of widows rapidly increased. Also, French armies of the revolutionary period and those of the empire consisted of three elements: conscripts, volunteers, and regulars from the old royal army. Many of the last group were reaching retirement age, and since under the new laws they too were eligible for pensions, the total number of pension applicants soared.<sup>23</sup> Perhaps even more devastating to the plight of the veterans, as well as the fiscal stability of France, was the problem of inflation, which started in 1792 and became particularly high in 1795 and 1796. To compensate for the deteriorating condition of the veterans and at the same time to curb the rising costs of the veterans program, the Directory government of France passed a law in September 1799 that readjusted veterans benefits according to rank and length of service. However, the law never went into effect because the Directory was overthrown soon after the law's passage.<sup>24</sup>

Despite the fact that veterans benefits were by now a major expenditure, French government during the Napoleonic period was firmly committed to the program. At the same time, Napoleon Bonaparte recognized the need to streamline veterans benefits to lessen the burden on the treasury. He appointed General J.G. Lacuee to carry out a reform of the veteran benefits program. Lacuee recommended a policy of "retrenchment but without sacrifice of the justice and equality due to the veterans." In line with this policy, military pension laws passed during the Napoleonic period lowered the scale of payments and redefined categories of eligibility. Particular attention was paid to invalids' eligibility for pensions by more precisely defining categories of wounds and the corresponding pension benefits and by introducing tighter safeguards against the possibility of fraud. At the same time, the government moved rapidly to ensure that all eligible veterans and disabled soldiers were covered by the program. The end result was that most veterans deserving military pension were included in the program, but the rates of compensation were decreased considerably, particularly for the lower ranks.<sup>25</sup>

Bowing to the demands of the allied powers who had fought Napoleon, severe fiscal constraints, and hatred of conscription by the war-weary French citizens, the restored Bourbon rulers drastically cut down the size of the army. Large number of soldiers were simply allowed to return home. Maintaining the old pensions at the pre-Restoration level, the Bourbons added relatively few new pensioners to the military pension program. The overwhelming number of the new pensioners,

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<sup>23</sup> See Woloch, *The French Veteran*, 77-91, 207. In 1795, 8,000 retired and disabled veterans, as well as war-widows, received pensions; by 1815 the number of pensions had risen to 118,000.

<sup>24</sup> Woloch, *The French Veteran*, 100-1.

<sup>25</sup> Woloch, *The French Veteran*, 102-8, 207. Within six months of the fall of the Directory, the new government cleared a backlog of applications for pensions of 30,000 veterans and disabled soldiers and 10,000 war widows and added them to the roll of pensioners. The following figures illustrate the changes in military pension program wrought by Napoleonic regime. In 1795, 8,000 pensioners received a total of 10,221,000 livres for an average pension of 1,277 livres. In 1815, 118,000 pensioners received a total of 35,190,000 livres for an average pension of 297 livres.

however, were officers commanding far higher than average scale of compensation.<sup>26</sup>

The Bourbon monarchy was overthrown in 1830 and replaced by the so-called July Monarchy of Louis Phillippe. Soon thereafter, the new French government passed a far-reaching military pension law, commonly referred to as the Law of 1831. This law, with occasional minor amendments and stop-gap measures, continued in force through the end of World War I (1914-18). The most unusual aspect of the Law of 1831 was that it made no provisions for retired soldiers but covered only soldiers disabled while in service and their widows. Even disabled soldiers received pensions only if they could prove a permanent service-incurred disability of no less than 60 percent. The only ex-soldier and ex-sailors, other than the disabled, who were eligible for pension were those who served at least thirty years.<sup>27</sup>

The Law of 1813 was replaced by the Law of March 31, 1919, known as the Great Pension Law. The intent of this law was to compensate all those who had suffered because of World War I and to lay claims for such compensation on the defeated Germany. Pensions were granted to disabled soldiers and to widows, orphans, and parents (where parents were deceased, grandparents acquired the right of compensation) of soldiers killed in battle or who died from wounds or disease in line of duty. The rate of all pensions was dependent on the degree of soldier's disablement and his rank. Several amendments were made to this law in the following years. The most important measure was the Service Man's Pension which was enacted in the Law of Finance of April 16, 1930. The law stipulated that all World War I veterans be paid annual pension on reaching the age of fifty, with an increase in the amount of pension at the age of fifty-five. The new law was the beginning of a universal military pension system in France.<sup>28</sup>

### Russia

During the medieval period (fourteenth to sixteenth century), the fighting nobility and their retinues were settled in peacetime throughout provincial Russia where they performed administrative and police functions. During war time they were maintained at the princes' expense. Common soldiers, on the other hand, supported themselves with booty and plunder. After battle, they returned to their original occupations. In the seventeenth century, as standing armies replaced the nobility and their retinues, monasteries and private charities provided the main means of support for wounded soldiers and their dependents. Until the beginning of the nineteenth century, veterans were settled on free land or in specifically designated towns. Military pensions laws were fragmentary and insufficient. When the veterans occasionally received a pension, the amount was insignificant.<sup>29</sup>

<sup>26</sup> By the time demobilization was completed in 1817, about 16,000, mostly officers, had been added to the military pension program since 1814. Their average pension pay was 900 livres, increasing the overall average pension from 300 livres in 1815 to over 350 livres in 1817. Woloch, *The French Veteran*, 296-98.

<sup>27</sup> Katherine Mayo, *Soldiers What Next!* (Cambridge: Riverside Press, 1934), 228; Nikolai I. Solov'ev, *Pensii voennym ofitserskim chinam i ikh semeystvam v Rossii, Germanii, Avstrii i Frantsii* (Pensions for Military Officers and Their Families in Russia, Germany, Austria and France) (St. Petersburg: V.A. Berezovskiy, 1893), 134.

<sup>28</sup> Mayo, *Soldiers What Next!*, 229-52.

<sup>29</sup> Solov'ev, *Pensions*, 55-71.

By the end of the sixteenth century, the plight of veterans and wounded soldiers had become increasingly intolerable and elicited the attention of Russia's rulers. Vasili Shuisky (Basil IV; 1606-13) was the first Russian monarch to establish homes and hospitals for disabled veterans. But until the reign of Peter the Great (1672-1725), the Church remained the principal provider of support for these unfortunates. Peter the Great's decision to place the Church under secular administration and his prohibition of charitable work by monasteries forced the crown to establish a network of poor houses and hospitals for invalids. The best known of these were the homes for disabled veterans in St. Petersburg and Kiev, founded in 1778 and 1797, respectively. The first monetary pension system for veterans in Russia was also established in the reign of Peter the Great.<sup>30</sup>

The crown's efforts on behalf of veterans and disabled soldiers and their families were, however, both meager and sporadic. Private charity, provided by the Russian nobility and the tsar's family, contributed significantly to the care of disabled veterans and their dependents. This amalgamation of various systems of support for veterans and disabled soldiers remained in effect to the very end of the Russian empire.

#### *Germany*

During the decline of the Roman Empire, central and western Europe was inhabited by numerous Germanic tribes. Military service played a significant role in their social system. Members of the upper class were free men who had the right to own property and bear arms, as well as the obligation to perform military service. As in other societies, the warriors were rewarded with grants of land.<sup>31</sup>

The Medieval Period in Germany witnessed the proliferation of mercenary armies. Mercenary service was based on a simple agreement, by which the soldier committed himself to serve in an army for a certain period of time in return for a certain monetary reward. He would continue to hire himself out (usually to the commander who offered the greatest reward) until injuries or old age rendered him unfit for service, whereupon he was left entirely to his own devices.

After the Thirty Years' War (1618-48), a series of wars that had embroiled virtually all of Europe, local soldiers began to replace foreign mercenaries in the armies of various German rulers and in the army of the now divided Holy Roman Empire (800-1806). The consequence of this transition was the same as in France: a growing demand for veterans compensation and care.

During the latter half of the seventeenth century, Frederick William, "the Great Elector" (1640-88), established a regular military pay and pension system in the Brandenburg electorate. Toward the end of his reign, he also organized the first German "invalid company" in Spandau. The number of

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<sup>30</sup> *Voennaia Entsiklopedia* (Military Encyclopedia) (St. Petersburg: I.D. Sytin, 1911), 8, 603-5.

<sup>31</sup> Solov'ev, *Pensions*, 45.

invalid companies gradually grew in the eighteenth century, after the merger of Brandenburg and Prussia. In 1749, the first home for disabled soldiers, the Invalidenhaus, was established in Berlin. Pensions were granted in 1792 to the widows of officers who died in the line of duty. At the beginning of the nineteenth century, another home for invalids was founded in Stolpe. Subsequently, in 1825, a military officers' pension law was passed in Prussia, followed by similar laws in Bavaria, Württemberg, Baden, and other states of the Germanic Confederation. Finally, a pension law for officers of the entire united army of the new German Empire was approved by the emperor in 1871.<sup>32</sup>

In accordance with the 1871 law, an officer who had served at least ten years and was deemed medically unfit for further service was entitled to a pension for life. Full benefits, however, would be awarded only to officers who had completed fifty years of service. A revised version of the pension law, passed by the German parliament in 1886, lowered the service requirement for a full pension to forty years. Provisions were also made for the widows and orphans of officers.<sup>33</sup>

When World War I broke out, the government encouraged voluntary participation in relief activities, as a means of saving money and fostering patriotism. Kaiser Wilhelm II (1888-1918) appealed to the German people's sense of "loyalty, unity, self-sacrifice, and determination."<sup>34</sup> Many benevolent organizations emerged, but their efforts were uncoordinated. Often, the needs of disabled veterans and their dependents could not be matched with the appropriate organizations.<sup>35</sup> Their plight was aggravated by deteriorating economic conditions. Shortages of supplies became so severe toward the end of the war that soldiers began sending relief packages to their families from the front. Begging was rampant, especially in the cities, and some beggars obtained second-hand military uniforms and posed as war invalids. "A new feature in Berlin," one eyewitness noted, "is the number of beggars one now sees everywhere. All the blind, the halt, and the lame of Prussia seem to have collected here."<sup>36</sup>

Of the 12 million German soldiers who fought in World War I, 2 million had been killed and over 1.5 million disabled.<sup>37</sup> Meager pensions were provided under an old law (1906-07), but the war victims demanded adequate compensation. Tens of thousands of invalids marched on the Ministry of War in Berlin in late 1918 and early 1919. An angry crowd drowned the Saxon war minister in the Elbe River.

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<sup>32</sup> Solov'ev, *Pensions*, 53-54, 98-101.

<sup>33</sup> Solov'ev, *Pensions*, 103.

<sup>34</sup> Robert W. Whalen, *Bitter Wounds: German Victims of the Great War, 1914-1939* (Ithaca, New York: Cornell University Press, 1984), 26.

<sup>35</sup> Whalen, *Bitter Wounds*, 96-97. The author cites the example of Sebastian Beyer, "who had been severely injured early in the war and required constant medical attention. But the only facility near his home that could have provided care was an institution for the elderly and indigent, and he objected to being placed there. Local welfare officials hit upon a solution. The man was single, but his brother, who had been killed in action, had been married. Why couldn't Sebastian marry his widowed sister-in-law? That way the soldier would get a full-time nurse, the woman would get a husband, and the government could cancel one widow's payment."

<sup>36</sup> From the diary of Evelyn Blücher, as quoted by Whalen, *Bitter Wounds*, 98.

<sup>37</sup> Mayo, *Soldiers What Next!*, 269-70.

To alleviate the crisis, in January 1919 an ordinance was passed that required "all public and private factories, bureaus, and agencies... to employ one severely disabled [veteran] for every 100 persons employed."<sup>38</sup> Subsequent amendments required businesses with twenty-five to fifty employees to employ one disabled veteran and to hire another disabled veteran for every fifty additional employees. In addition, the jobs of disabled veterans were protected.

In February 1919, the German Federal government "assume[d] responsibility for social services for disabled veterans and survivors," in cooperation with the states and private institutions.<sup>39</sup> (Hitherto, social services were strictly the responsibility of state and local governments.) War Victims Offices, charged with administering social services, were to be established by the individual states.

Germany's long-awaited National Pension Law was passed by the National Assembly in April 1920. A government pamphlet described the scope of the law:

About 1.5 million disabled veterans, 525,000 widows, 1,130,000 orphans and 164,000 parents will be cared for. Since families of war victims will share pension benefits, altogether around five million people will be affected by the new law.<sup>40</sup>

Entitlement to pensions, under the new law, was based on the medical determination that the applicant's injury or illness was service-related. No distinction would be made between combat and non-combat injuries. Unlike its French counterpart,<sup>41</sup> the German law did not consider military rank in fixing a veteran's pension. The Pension Office physician, however, did take into account a veteran's educational background and prewar employment. If the applicant had been a skilled carpenter or machinist, for example, he would be entitled to 35 percent more than would an unskilled laborer. The applicant would receive a 70 percent supplement if he had been an "active and responsible executive."<sup>42</sup>

After it was decided to what extent the applicant's earning capacity had been reduced, his pension could be supplemented by a "location allowance" (if he lived in a city), a "cost of living allowance" (depending on the rate of inflation), a "transition allowance" (if he was unemployed), or a "care allowance" (if he required special medical care at home). A "death allowance" for burial expenses was granted to the family of a deceased pensioner, in addition to a "death benefit" (the

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<sup>38</sup> Ordinance Concerning Employment of the Severely Disabled, January 9, 1919, as cited by Whalen, *Bitter Wounds*, 134.

<sup>39</sup> Ordinance Concerning Social Services for Disabled Veterans and Survivors, February 8, 1919, as cited by Whalen, *Bitter Wounds*, 134-35.

<sup>40</sup> *Kriegsbeschädigte! Kriegshinterbliebene! Was leistet das Reich für Euch?* Berlin: Reichszentrale für Heimatdienst, 1920. Quoted by Whalen, *Bitter Wounds*, 131. The National Pension Law was officially known as the Reichsversorgungsgesetz (RVG).

<sup>41</sup> The Pension Law of March 31, 1919 (the "Great Pension Law").

<sup>42</sup> Mayo, *Soldiers What Next!*, 271.

equivalent of three months' benefits).

According to the National Pension Law, a widow was entitled to at least 30 percent of her deceased husband's full pension (that is, the benefits he would have received had he survived and been 100 percent disabled), and up to 50 percent if she was over fifty years of age, or herself disabled, or had dependent children. A child whose mother was living was granted 15 percent of the deceased father's full pension. If both parents were dead, the orphan received 25 percent. The wives of deceased soldiers whose deaths were not service-related became eligible for modest temporary pensions. Permanent or temporary pensions were granted to parents who had been dependent on their deceased sons prior to military service.<sup>43</sup>

Veterans had the right to appeal Pension Office decisions. As part of the administrative framework of the new pension system, two levels of appeal courts were established: the lower-level Courts of Pensions and a higher bench, the National Court of Pensions. The appellant's case was usually prepared for him by the particular veteran's organization to which he belonged. Such organizations, although entirely unofficial, served as legal advisers to the appellant and represented him in court.<sup>44</sup>

Quickly, however, the courts became swamped with cases. At the National Court of Pensions, the backlog swelled from 6,110 cases in December 1920 to 43,186 in December 1923--more than a sevenfold increase.<sup>45</sup> Moreover, a relatively small number of Pension Office decisions were altered or reversed by the courts; in 70 to 80 percent of the cases it examined, the National Court of Pensions decided against the appellants.<sup>46</sup>

### ***Britain***

Chronicles from the reign of Alfred the Great (A.D. 849-901), king of the West Saxons, contain the earliest mentions of rewards in England for military service, usually in the form of land grants. In their struggle for supremacy, the warring kings of Wessex, Northumbria, and Mercia garrisoned newly conquered lands with settlements or military posts. Each settler was awarded "fully five hides of land, and a helm, and a mail-shirt, and a sword ornamented with gold."<sup>47</sup>

Norman kings, like their Saxon predecessors, bestowed in the eleventh and twelfth centuries

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<sup>43</sup> Whalen, *Bitter Wounds*, 137-38.

<sup>44</sup> Mayo, *Soldiers What Next!*, 511-12. Courts of Pensions consisted of a judge-president, usually a high-ranking civil service official, and two assistants. Of the two assistants, one served on the legal staff of the Red Cross or a similar non-government social service agency, and the other represented an organization of disabled veterans. The National Court of Pensions consisted of the three men chosen as above, sitting with one judge of the common courts and one member of the lower pension courts.

<sup>45</sup> Whalen, *Bitter Wounds*, 143.

<sup>46</sup> Ergebnis der Rechtsprechung des RVGers nach dem statistischen Jahresbericht für das Jahr 1927; Geschaftslage des RVGers, 1928, BA R116/298. Cited by Whalen, *Bitter Wounds*, 171.

<sup>47</sup> Llewellyn and Jones, *Pensions*, 3.

conquered lands on their vassals--the feudal barons--who, in turn, assumed moral responsibility for the welfare of their soldiers. The barons were also expected to support the soldiers' widows and orphans. Thus, the awarding of pensions or rewards was confined to the realm of personal charity. It was up to the individual baron to decide how, or whether, to reward his soldiers.

Although he had no legal recourse in the feudal system, the disabled soldier who was neglected by his lord could always find refuge in the monastery. With the disintegration of the feudal system and the subsequent decline of the monasteries, however, he was driven to begging in the streets.

Toward the end of the sixteenth century, as thousands of English soldiers and sailors returned from the war against Spain, the number of beggars swelled and riots broke out in the cities. To help restore order, aristocrats such as Lord Charles Howard of Effingham initiated the practice of issuing "begging licenses" to disabled veterans. Also, a charitable fund for sailors disabled in the line of duty, called the Chatham Chest, was founded in 1590 by Lord Howard, Sir Francis Drake, and Sir John Hawkyns. Although many impoverished sailors received assistance from the Chatham Chest, corruption plagued its board of governors, and the fund was depleted by the close of the seventeenth century.<sup>48</sup>

Through a series of statutes in the last ten years of her reign, Queen Elizabeth I (1558-1603) --just before the beginning of the founding of colonies in North America--established the principle of local (county-level) responsibility for "maimed, hurt, or grievously sick soldiers" was established. Often, however, the counties sought to evade this responsibility by "commuting pensions" to neighboring counties.<sup>49</sup>

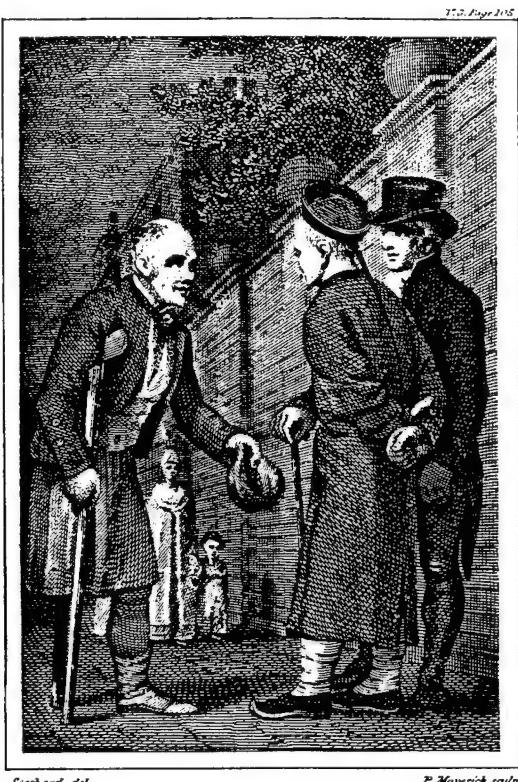
The plight of disabled soldiers received recognition at the national level in 1593, when Parliament passed "An Acte for the Relief of Souldiours." Those who had served since 1588, the year the English defeated the Spanish Armada, were entitled to "be relieved and rewarded to the end [so] that they may reap the fruit of their good deservings, and that others may be encouraged to perform the like endeavors." Based on the degree of disability, a private was to be paid up to £10 per year and a lieutenant up to £20 per year. For the first time in history, the disabled veteran had legal grounds for compensation--albeit meager--from his national government. Later acts and statutes expanded the system and by 1599 a veterans relief plan was well in place. Furthermore, as English law, these acts were applied in England's overseas colonies and are seen by historians as the precursors of the American colonial pension administration in the early seventeenth century.<sup>50</sup>

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<sup>48</sup> Adkins, *Medical Care of Veterans*, 16-19.

<sup>49</sup> Llewellyn and Jones, *Pensions*, 5-6; and Basil Williams, "Pensions," *Recalled to Life* (London), No. 1, June 1917, 91. Commuting of pensions was a practice by which a county would try to transfer the maintenance of disabled veterans to a neighboring county by fraudulent means or by forcing wounded soldiers into adjacent counties.

<sup>50</sup> William H. Glasson, *Federal Military Pensions in the United States* (New York: Oxford University Press, 1918), 9-10; and Adkins, *Medical Care of Veterans*, 2, who says this act became "the cornerstone of the entire structure of the American compensation and pension system, and Federal care for disabled veterans, that came into being centuries later."



A disabled British sailor begging from a Chinese visitor to London, taken from an 1809 edition of *The Citizen of the World* (1742), by Oliver Goldsmith (1728-74).

Courtesy Library of Congress

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During the English Civil War (1642-51), Parliament took additional steps to assist disabled veterans and, as well, the dependents of slain soldiers (excluding Royalists). A tax was levied in 1643 "upon all parishes in England for the purpose of raising a fund for the relief of maimed soldiers and the widows and fatherless children." The proceeds of sequestered estates and £100 pounds per week from the excise were assigned to this fund.<sup>51</sup>

After the restoration of the monarchy in 1660, Charles II (1660-85) took a serious interest in the well-being of soldiers who had been loyal to the king. In 1662, he approved a statute that permitted veterans to practice a trade without completing their apprenticeship. In 1681, eleven years after Louis XIV of France founded the Hôtel Royal des Invalides in Paris, Charles II issued a charter for the establishment of the Royal Hospital at Chelsea for disabled soldiers. Also at this time, planning began for the establishment of a hospital in Greenwich for disabled sailors. The construction of both hospitals was completed during the reign of William III (1689-1702).

Medical care for disabled veterans was accompanied by the development of the national pension system. Pensions were based on disability incurred in the service or on infirmity after twenty years' service. The "in-pensioners" at Chelsea received food, shelter, clothing, and medical attention, as well as a small amount of pocket money. "Out-pensioners," that is, those who were eligible for admission but could not be accommodated, were granted pensions until vacancies occurred. Soon, however, there were many more out-pensioners than in-pensioners. During the eighteenth century, the out-pensioners were organized into "invalid companies" and were liable to be called up for special service in wartime.

Between 1681 and 1754, out-pensioners received annual pension payments in arrears, compelling first-year recipients to borrow money at steep rates on the security of their pensions. Benefits were further depleted by Pay Office clerks, who charged commissions on all pensions. In 1754, Paymaster General William Pitt reformed the system by obtaining a bill that authorized semi-annual payments in advance, abolished mortgages on pensions, and outlawed the practice of extortion by pension officials. Semi-annual payments continued until 1815, when pensioners began to be paid quarterly.

In 1806, Parliament passed Windham's Act granting a pension to all soldiers invalided, disabled, or discharged after fourteen to twenty-one years of service. Pension rates, nonetheless, remained low in nineteenth-century Britain. At the time of the Crimean War (1854-56), disability pensions for wounds and injuries received in action ranged from eight pence (partial disablement) to a maximum of two shillings per day (for total disablement) for privates, while their service pensions after twenty-one years in the ranks could not exceed one shilling per day (those who had served longer were entitled to one shilling two pence per day).<sup>52</sup>

The pension scale was improved during the South African War (1899-1902). For partial

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<sup>51</sup> Llewellyn and Jones, *Pensions*, 6-7.

<sup>52</sup> Williams, "Pensions," 94.

disablement, a private now received up to two shillings per day and for total disablement two shillings six pence. The same pensions were granted to soldiers discharged for disease incurred through war service. Most importantly, in 1901, pension grants were extended to the widows and orphans of non-commissioned officers and of soldiers who died within twelve months of their discharge.<sup>53</sup>

World War I (1914-18) precipitated a radical change in attitudes with regard to the role of the national government in providing compensation and care for disabled veterans. "Swiftly on the outbreak of the Great War," one contemporary writer observed, "its grim potentialities gripped the imagination of the nation, and the old-time apathy of the State towards the disabled soldier was replaced by one of anxious solicitude."<sup>54</sup> Charitable organizations, which had traditionally supplemented inadequate pensions and helped disabled veterans to find jobs, were overwhelmed by the huge numbers of wounded soldiers returning to Britain.

Early in the autumn of 1914, Parliament convened a Cabinet Committee to formulate a new scale of pensions and separation allowances. The proposed increases, however, were deemed inadequate by Parliament, and, in November, a Select Committee headed by David Lloyd George (who became prime minister in 1916) was appointed to revise the pension scale. On May 21, 1915, based on the recommendations of the Select Committee, a Royal Warrant granted a disabled private a minimum of twenty-five shillings per week and correspondingly higher rates to soldiers of higher rank. For the first time, the dependent children of disabled veterans were to receive an allowance (not exceeding two shillings six pence per week). Also, payments to widows and orphans were increased substantially, a widow being entitled to ten or fifteen shillings, depending on her age, and the rate for orphans was raised to five shillings for the first, three shillings six pence for the second, and two shillings for each additional dependent child.<sup>55</sup> But the importance of the warrant of 1915 lies mainly in the unprecedented opportunities that it gave for the rehabilitation of disabled veterans.

Responding to the demand for a systematic approach to the issue of rehabilitation, Parliament appointed another committee, with Sir George Murray as chairman, to study means of providing treatment, training, and employment to disabled veterans. Murray's committee recommended that a central authority, "empowered to act, either through the agency of the appropriate public Department, or independently, as the case may require," be placed in charge of caring for disabled veterans.<sup>56</sup> Accordingly, in November 1915, Parliament passed the Naval and Military War Pensions Act, whereby the national government, for the first time, acknowledged its responsibility for the rehabilitation of disabled sailors and soldiers after their discharge from service. The 1915 act authorized the establishment of a Statutory Committee of the Royal Patriotic Fund Corporation,

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<sup>53</sup> For a comparison of pension benefits in England and the United States during this period, see Llewellyn and Jones, *Pensions*, 17-18.

<sup>54</sup> Llewellyn and Jones, *Pensions*, 23.

<sup>55</sup> Williams, "Pensions," 96-97.

<sup>56</sup> Llewellyn and Jones, *Pensions*, 26.

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assisted by local volunteer committees in counties and boroughs, to which it delegated the following functions:

To make provision for the care of disabled officers and men after they have left the Service, including provision for their health, training, and employment.  
To make grants in special cases for the purpose of enabling widows, children, and other dependents of deceased officers and men to obtain training and employment.<sup>57</sup>

Although a sum of £1 million was voted by Parliament to enable the Statutory Committee to carry out its duties, the 1915 act implied that many of the committee's expenses should be covered through private funding. This fact, combined with insufficient experience and bureaucratic overlap, hindered the endeavors of the Statutory Committee. Hence, the Statutory Committee was replaced in 1916 by a more powerful entity, the Ministry of Pensions.

Under the Ministry of Pensions Act, passed in December 1916--although all pensions granted for length of service remained in the hands of the Admiralty, the War Office, and the Royal Chelsea Hospital--all those awarded for disability were transferred to the Ministry of Pensions. In cooperation with the Ministry of Labour and the War Office, the new ministry assumed responsibility for the treatment, after-care, and rehabilitation of disabled veterans.<sup>58</sup>

One of the first acts by the first minister of pensions, G.N. Barnes, was to address certain shortcomings of the Royal Warrant of 1915 and to draft a new warrant in 1917. Under the 1915 statute, for example, the totally disabled veteran was entitled to a pension of twenty-five shillings per week, while the partially disabled veteran received a payment that, combined with his industrial earnings, also guaranteed him twenty-five shillings per week. Thus, it was widely felt that a work disincentive had been established. The Barnes warrant abolished the reference to the earning capacity of the recipient and laid down that all pensions were to be based exclusively on the degree of disability. As long as a veteran's disability remained in status quo, he had the right to a fixed pension--notwithstanding any improvements in his earning capacity that may have been attained through training or other means.

The minimum payment to a totally disabled private, moreover, was increased from twenty-five shillings to twenty-seven shillings six pence, special allowances were granted to veterans undergoing medical treatment or remedial training, and higher rates were set for widows and orphans, as well as for children of disabled veterans. For the first time, "separated wives," "unmarried wives," and "illegitimate children" were entitled to permanent or temporary pensions. The wives of deceased soldiers whose death could not be attributed to military service became eligible for "alternative

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<sup>57</sup> Williams, "Pensions," 103-4. The Statutory Committee consisted of twenty-seven members appointed by the Crown: the Royal Patriotic Fund Corporation, the War Office, the Admiralty and other government agencies, and the Soldiers' and Sailors' Families Association, as well as representatives of labor and some women.

<sup>58</sup> Llewellyn and Jones, *Pensions*, 33-35.

pensions" (that is, temporary benefits).<sup>59</sup>

A warrant drafted in 1918 granted free medical care to soldiers discharged for disability not attributable to military service, allowances to the families of such soldiers, and pensions to soldiers' parents who were incapable of self-support. Hitherto, pensions were given to parents only if they had been dependent on their sons prior to military service. Alternative pensions to widows were increased from one-half to two-thirds of the pension payable to the husband had he survived. Allowances for the children (legitimate and illegitimate) of disabled veterans and for orphans were also raised.

Under the terms of the royal warrant, any veteran with a war-related disability who believed his pension inadequate could request an examination by a medical referee. For this purpose, the minister of pensions assigned referees to the local committees. Taking into account the referee's opinion, the ministry would then review the pension. The process was not the same, however, for veterans with disabilities not attributable to military service. Such appeals were handled by the newly established Pensions Appeal Court. Because of the time-consuming nature of the proceedings, local committees were authorized to grant temporary allowances pending the decision of the court.<sup>60</sup>

By the end of the war, 750,000 British soldiers had been killed, and 600,000 war-disabled men were receiving pensions. By April 1920, some 820,000 more disabled veterans had been discharged from hospitals and required some form of assistance, as did the dependents of dead and disabled men.<sup>61</sup> The Ministry of Pensions faced a formidable challenge.

In the post-war period, a seven-year limit from the date of discharge was set on filing claims for war-related disability pensions.<sup>62</sup> It was based on the opinion of medical experts that seven years was sufficient time for the development of war-related injuries. In cases where claims were rejected by the Ministry of Pensions, applicants could appeal the decision, in accordance with the War Pensions Act of 1919, to the Pensions Appeal Tribunals. These were independent tribunals appointed by the Lord Chancellor in England and Wales, and by the Lord President of the Court of Sessions in Scotland. Their decisions were legally binding, final both to the ministry and the appellant.<sup>63</sup> Only a small percentage of ministry decisions, however, were reversed by the tribunals.

By March 31, 1933, pension claims had been admitted from 1.9 million people, including officers, enlisted men, widows, and dependents. Of these, 97.6 percent had been admitted on the ministry's original decision, and only 2.4 percent came in through the Pensions Appeal Tribunals.<sup>64</sup>

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<sup>59</sup> Llewellyn and Jones, *Pensions*, 35-39.

<sup>60</sup> Llewellyn and Jones, *Pensions*, 40-41.

<sup>61</sup> Mayo, *Soldiers What Next!*, 385.

<sup>62</sup> War Pensions Act, 1921, Section 5, as cited by Mayo, *Soldiers What Next!*, 433.

<sup>63</sup> Mayo, *Soldiers What Next!*, 434-35. Pensions Appeal Tribunals were composed of three members: an attorney, a disabled officer or enlisted man who had been discharged because of a war-related injury, and a physician; also, when necessary, a physician who specialized in the type of medical disorder with which the appellant suffered. The attorney-member served as chairman.

<sup>64</sup> Mayo, *Soldiers What Next!*, 436.



A physically rehabilitated British war veteran working in a defense industry during World War I. From *Recalled To Life*, a journal devoted to the care, reeducation, and return to civilian life of disabled soldiers and sailors; London, June 1917.

*Courtesy Library of Congress*

## COLONIAL AMERICA

### Developments to 1764

In most British North American colonies, public support for the veterans of a war was a matter of prudent policy. Outside of the Puritan colonies in New England--where participation in the militia was regarded as a public duty--the raising of volunteers was an arduous process, and impressment was a well-utilized but highly unpopular tool for military recruitment. Colonial governments generally (if tacitly) recognized that the recruitment of volunteers for military campaigns could not be successful without incentives. While single men might join for the sake of adventure, those with families or those who were committed to a farm or a trade were necessarily reluctant to risk their livelihoods, unless the threat, such as from hostile Indian tribes, was close at hand. Inhabitants in colonies far from the scene of enemy depredations were even less likely to appreciate the need for concerted military action ordered by a distant government in London were settlers in colonies that were more directly threatened with attack. Colonial legislatures thus found it advantageous to use promises of invalid and dependent pensions as inducements to attract volunteers to the "country service."<sup>65</sup> Prior to 1764, however, each colony, as it was confronted with the problem, had tackled provisions for war veterans in a different way (see fig. 1).

#### *Massachusetts*

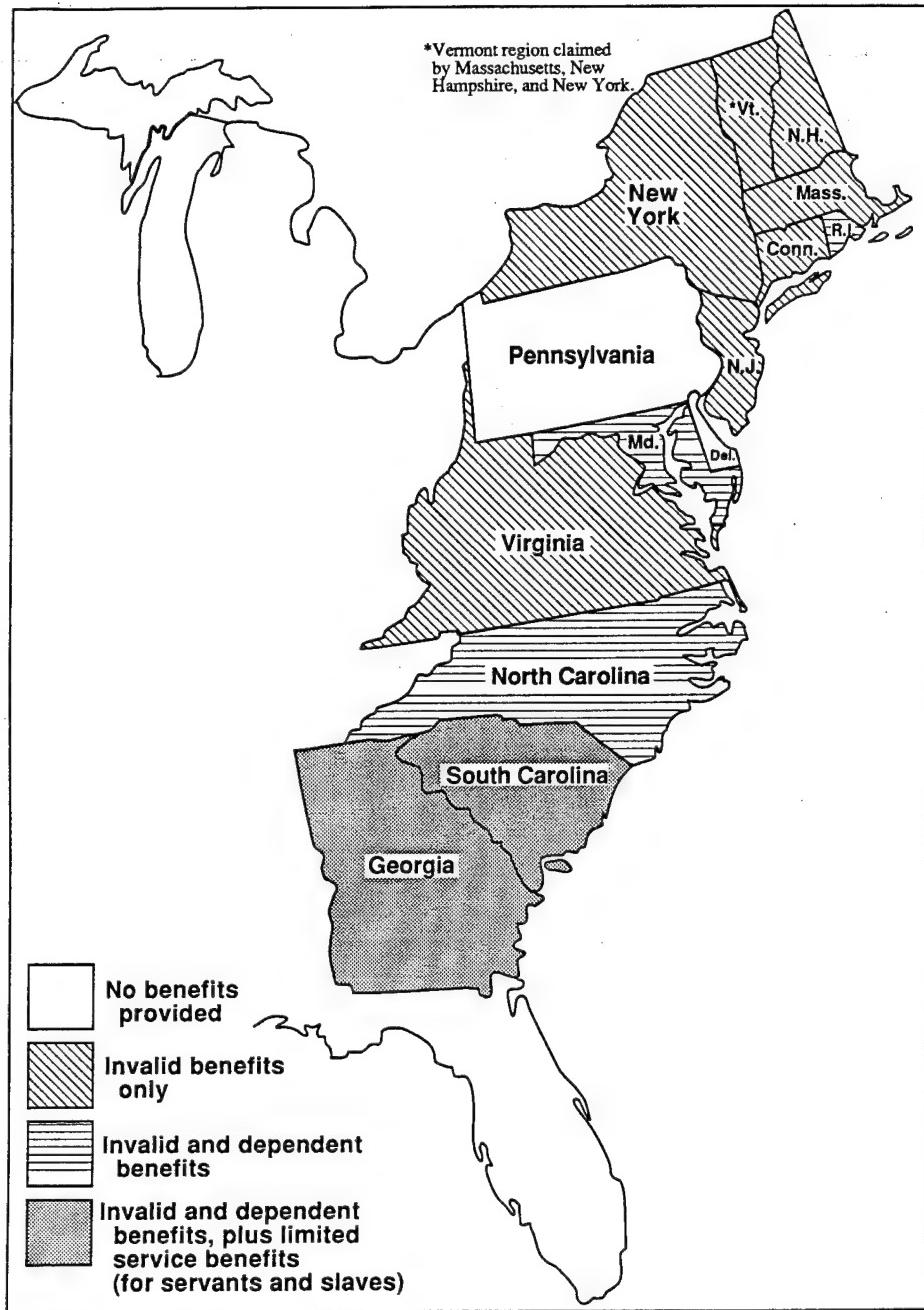
The first colonial law providing benefits for war veterans was enacted by the General Court of the Plymouth Colony in 1636, probably in connection with the joint war effort (among Plymouth, Massachusetts Bay, and the three Connecticut colonies) against the Pequot Indians in Connecticut.<sup>66</sup> Although rudimentary in form, the Plymouth statute provided that any man "sent forth as a souldier" who returned to the colony maimed would thereafter be "maintained competently" for the rest of his life at the expense of the public treasury.<sup>67</sup> Significantly, this law was so general in scope that it remained in effect as late as 1682. The neighboring colony of Massachusetts Bay, on the other hand, apparently made no particular provision for veterans until King Philip's War (1675-78; for a list of colonial wars, see Appendix B). After receiving petitions for relief from a number of wounded veterans of that war, the General Court of Massachusetts Bay, on May 3, 1676, set up a standing

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<sup>65</sup> The term *invalid pensions* refers to pensions granted for injuries or chronic illnesses caused by military service. *Dependent pensions* are pensions granted to surviving dependents of a soldier killed in the line of duty. *Service pensions* are pensions granted solely in recognition of a veteran's service to his country.

<sup>66</sup> The General Court, despite its deceptive name, was the name used for the legislatures of Plymouth Colony, Massachusetts Bay Colony, and Connecticut.

<sup>67</sup> David Pulsifer [Clerk in the Office of the Secretary of the Commonwealth], *Records of the Colony of New Plymouth in New England. Printed by Order of the Legislature of the Commonwealth of Massachusetts*, vol. 11 [Laws. 1623-1682] (Boston: William White, Printer to the Commonwealth, 1861), 13, 106, 182. The "competent maintenance" concept does not have a direct analog in current parlance. In the seventeenth and eighteenth centuries the term "competency" referred to a comfortable level of economic independence. See Daniel Vickers, "Competency and Competition: Economic Culture in Early America," *The William & Mary Quarterly*, 3d Series, 47, No. 1, January 1990, 3-29. Vickers (p. 3) suggests that for the early inhabitants of British North America, competency was an ideal state of economic well-being, morally legitimate as well as desirable, which involved the accumulation of just enough property "to absorb the labors of a given family while providing it with something more than a mere subsistence."



**Figure 1. Veterans Benefits in the Thirteen Colonies, 1764**

committee "to consider of peticons of this nature, and make their report of what they judge meet to be donn...."<sup>68</sup> After the two colonies were unified under the Charter of 1691 as the Province of Massachusetts Bay, a distinction was apparently made between those serving the colony in the regular (that is, British) army and those who served the colony through participation in the local militias. Evidence of this distinction is a legislative act of 1693 that provided yearly pensions to soldiers and seamen who had been--or might in the future be--disabled by virtue of "any wound received in their majesties' service within this province."<sup>69</sup> A militia bill passed on the same date, however, contained no similar provision.<sup>70</sup> In fact, pension benefits were provided to volunteers only under specific circumstances. In 1697, near the end of King William's War (1689-97), for example, the legislature passed an act designed to encourage volunteers to pursue hostile Indians. The act granted the following incentives to those commissioned under its authority by the colony's governor: bounty payments out of the public treasury for Indian scalps (£50 for each adult; £10 for each child under ten years of age), retention of "all plunder and prisoners... taken of the enemy," and

in case any person or persons shall be wounded in the aforesaid service, he or they shall be cured at the charge of the publick; and if maimed or otherwise disabled shall have such stipend or pension allowed unto him or them as the general court or assembly shall think meet.<sup>71</sup>

That such a generous provision for volunteers was unusual is suggested by the fact that a similar act, passed just nine years later, included the bounty and plunder allotments, but omitted the provision for pensions and medical care.<sup>72</sup> On the other hand, the General Court continued to view pensions for the regular army as a standard benefit of military service on the colony's behalf.<sup>73</sup>

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<sup>68</sup> Nathaniel B. Shurtleff, *Records of the Governor and Colony of Massachusetts Bay in New England. Published by Order of the Legislature* (Boston: William White, Printer to the Commonwealth, 1853-1854), vol. 5, 80. This committee apparently continued in force for some years, since, in May 1679, the General Court referred "some men wounded in the late warr, who moove for releife" to "repaire to the committee appointed by the Generall Court for releife of such persons." At the same time, the committee was also ordered to meet regularly in September and March for consideration of such petitions. That sickness had become a significant problem for the colony's military operations by this time is suggested by the fact that, two days after setting up its standing committee for wounded soldiers, the General Court was forced to order "that all the sick or necessitous persons in the army be licensed to repaire to their ounce homes for ten dayes," for want of appropriate provisions in the garrisons to which they were attached. Shurtleff, *Records of Massachusetts Bay*, vol. 5, 92, 226-27.

<sup>69</sup> *Acts and Resolves, Public and Private, of the Province of Massachusetts Bay: To Which are Prefixed the Charters of the Province. With Historical and Explanatory Notes, and an Appendix. Published under Chapter 87 of the Resolves of the General Court of the Commonwealth for the Year 1867*, vol. 1 [1692-1715] (Boston: Wright and Potter, Printers to the State, 1869), 135. The relevant act is given as chapters 4 of the bills enacted by the 1693-94 legislature, first session. The preamble to chapter 4 states that the purpose of the act was "[f]or the more speedy levying of souldiers for their majesties' service and the better to prevent disappointments through default in any improved therein, or by the non-appearance of such as shall be appointed to said service...." It is clear that pension benefits were being used here more as a recruiting tool than as an emolument ensuing from enlistment.

<sup>70</sup> "An Act for Regulating of the Militia," 1693-94 Session ch. 3; *Acts and Resolves of the Province of Massachusetts Bay*, vol. 1, 135.

<sup>71</sup> See "An Act for Encouragement of the Prosecution of the Indian Enemy and Rebels," 1697 Session ch. 12, § 1; *Acts and Resolves of the Province of Massachusetts Bay*, vol. 1, 292.

<sup>72</sup> "An Act to Encourage the Prosecution of the Indian Enemy and Rebels," 1706-07 Session ch. 7; *Acts and Resolves of the Province of Massachusetts Bay*, vol. 1, 594-95.

<sup>73</sup> The pension provisions of the 1693 act were duplicated in subsequent acts for the levying of soldiers for the regular army in 1699-1700 (ch. 19, § 6), 1702 (ch. 6, § 4), 1721-22 (ch. 1, § 9), 1744-45 (ch. 2, § 14), and 1748-49 (ch. 5, § 15). See *Acts and Resolves of the Province of Massachusetts Bay*, vol. 1, 400, 499-500; vol. 2, 227; vol. 3, 146, 419.

**Virginia**

The Virginia House of Burgesses adopted a body of laws and ordinances in 1624 that included an article providing for public medical care for those who might be wounded and pensions for those who might be disabled in a forthcoming campaign against the Powhatan Confederacy of tribes. However, these laws became moot before they could be ratified by the Virginia Company's board in London; the British Crown had already revoked the company's charter.<sup>74</sup> A second bill, enacted by the House of Burgesses in 1644 during a second war with the Powhatan Confederacy, provided relief for the "diverse men" who had been "hurt and maymed and disabled from provideing for their necessary maintenance and subsistence" during their service to the colony in recent expeditions against the Indians.<sup>75</sup> These arrangements were continued by subsequent legislation in 1645 and 1646, that further specified that the county in which the wounded soldier resided was to defray the cost of his cure or maintenance.<sup>76</sup> In March 1676, a similar provision was adopted by the House of Burgesses with respect to a campaign against the Doeg Indians, along with a resolution for "due consideration... of the indigent ffamilies of such as happen to be slaine, and of persons and ffamilies of those who shalbe maimed and disabled in this warr."<sup>77</sup>

During King George's War (1739-48), Virginia raised troops for expeditions against the French in Canada and the Spanish in Florida but did not allow for benefits to the disabled.<sup>78</sup> At the commencement of the French and Indian War (1754-63), however, the House of Burgesses resumed its former policy of providing pensions to maimed and disabled soldiers. The levying of soldiers had evidently become a critical issue by this time, for in addition to invalid pensions recruits were promised protection from lawsuits by creditors and complete tax exemptions as long as they remained in active service.<sup>79</sup>

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<sup>74</sup> William Waller Hening, *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature in 1619. Published Pursuant to an Act of the General Assembly of Virginia, Passed on the Fifth Day of February, One Thousand Eight Hundred and Eight* [2d ed.] (New York: R. and W. and G. Bartow, 1823; facsimile reprint Charlottesville: University Press of Virginia for the Jamestown Foundation of the Commonwealth of Virginia, 1969), vol. 1, 121-29. Article 32 of the code, which covers the provision of benefits to disabled veterans, appears on p. 128.

<sup>75</sup> Hening, *Statutes*, vol. 1, 287.

<sup>76</sup> Hening, *Statutes*, vol. 1, 292-3, 311. The act at the March 1646 session authorized county commissioners "to raise leavies in the counties for the aforesaid uses."

<sup>77</sup> Hening, *Statutes*, vol. 2, 331. The bill's language was evidently not strong enough to suit many of those anticipating service in the war. Led by one Nathaniel Bacon, a group of angry and hard-pressed Virginians of the lower economic strata overthrew the government of Sir William Berkeley in May 1676. In June the House of Burgesses met at James City—with Bacon sitting as governor—and passed "An act for carrying on a warre against the barbarous Indians" as their first official deed. The act provided "that all such soldiers as shall be maimed and disabled in this war as aforesaid shall be maintained by the publique by an annuall pension dureing their lives, and dureing the time of such their disabilitie...." vol. 2, 341-50 (especially 347). Once the rebellion had been put down, the latter act was repealed along with all others enacted by the rebel session of the House of Burgesses. See "An act declaring all the acts, orders and proceedings of a grand assembly held att James City, in the month of June 1676, voyd, null and repealed," Act IV of the February 1677 session; vol. 2, 380-81.

<sup>78</sup> See "An Act, for raising Levies and Recruits, to serve in the present War, against the Spaniards, in America," May 1740 Session, ch. 3; "An act, for giving a sum of money, not exceeding four thousand pounds, toward defraying the expence of inlisting, arming, cloathing, victualling, and transporting the Soldiers in this colony, on an intended expedition against Canada," July 1746 Session, ch. 1; Hening, *Statutes*, vol. 5, 94-96, 401-4.

<sup>79</sup> See "An Act for raising the sum of forty thousand pounds, for the protection of his majesty's subjects on the frontiers of this colony," August 1755 Session ch. 1; Hening, *Statutes*, vol. 6, 525, 527-28.

## Maryland

Rather than enacting laws for the purpose of attending to the wounded of individual wars, the Maryland General Assembly in 1661 enacted a general bill providing pensions for "every person that shall adventure as a Souldier in any warre in the defence of the Country and shall therein happen to be maymed or receive herte."<sup>80</sup> The militia law of 1678 expanded this rudimentary plan by specifying that yearly pensions, not only for disabled soldiers but also for the widows and orphans of those killed in battle, would be allotted out of the public levy on tobacco and were to be paid when "the party petitioning for such pension and allowance [had] procure[d] a Certificate from the Commissioners of the County Court where he[,] shee or they live that he[,] she or they are Objects of Charity & deserve to have such pension and allowance."<sup>81</sup> This administrative structure for the provision of benefits to veterans and their dependents remained in Maryland throughout the colonial period. During the French and Indian War, for example, the General Assembly reasserted the principles of the 1678 militia act in a number of "supply bills" that authorized the raising and arming of Maryland troops for the Crown's various expeditions against the French in western Pennsylvania and Canada.<sup>82</sup>

## New York

The first legislative provision for war veterans benefits in New York was enacted in 1691, during King William's War, when New York had to defend itself against incursions by the French and their Indian allies. Under the leadership of Jacob Leisler, a former militia officer, the New York

<sup>80</sup> "An Acte for Encouragmt of such Souldiers as shall Adventure in the defence of the Country," passed May 2, 1661. William Hand Browne, J. Hall Pleasants, and Elizabeth Merritt, *Archives of Maryland* (Baltimore: Maryland Historical Society), vol. 1, 408. The General Assembly evidently perceived this bill to be important for the well-being of the colony as a whole because they sought to have the act confirmed by the Lord Proprietor himself. In April 1662, the Lieutenant General of the colony finally confirmed the act in the Lord Proprietor's name. Browne, *Archives of Maryland*, vol. 1, 436.

<sup>81</sup> Browne, *Archives of Maryland*, vol. 7, 58. The same paragraph refers to the 1661 act as "the perpetuall Law of this Province." Records of the proceedings of Maryland's courts indicate that Maryland soldiers did, in fact, avail themselves of the pension provision in Maryland law.

<sup>82</sup> "An Act for granting a Supply of Forty Thousand Pounds for his Majesty's Service, and striking Thirty Four Thousand and Fifteen Pounds Six Shillings thereof, in Bills of Credit, and raising a Fund for sinking the same," February Session 1756 no. 5; Browne, *Archives of Maryland*, vol. 52, 480-521 (the invalid pension clause appears on p. 493). See also, "An Act for granting a Supply of Sixty Thousand Pounds for his Majesty's Service, and for defraying the Expences heretofore incurred for the Defence and Security of the Frontier Inhabitants of this Province, and for other Purposes therein mentioned," March 1760 Session; Browne, *Archives of Maryland*, vol. 56, 263-306. Section 30 of this latter bill (appearing on p. 275) introduces a new condition for the grant of an invalid pension: the applicant must produce to the county court a certificate from his commanding officer that states the conditions of his service, avows his good behavior, and indicates the cause of his discharge. More importantly, this bill also changed the manner in which pensions were to be administered: rather than leaving the Courts with the authority to both determine and pay the allowance to be granted to the disabled soldier, the Court would now merely grant the petitioner a certificate that verified his eligibility for the pension. The petitioner would then have to present this second certificate from the Court to the General Assembly, and the Assembly would authorize payment. This same language was repeated in the Supply Bill passed by the Lower House in 1762. See Browne, *Archives of Maryland*, vol. 58, 523-48 (the invalid pension provision appears on p. 539 as § 34). It is doubtful, however, that these latter two Supply Bills actually became law; Browne et al. note that the 1762 bill was rejected by the Upper House "as had been eight similar supply bills during the preceding five years." Browne, *Archives of Maryland*, vol. 58, xix-xx, 523. The failure of the General Assembly to act during the critical later phase of the war can be attributed to an internal struggle for political hegemony between the General Assembly on the one hand and the colony's Proprietors on the other. See J. William Black, *Maryland's Attitude in the Struggle for Canada* [Johns Hopkins University Studies in Historical and Political Science, Tenth Series, no. 7] (Baltimore: Johns Hopkins Press, July 1892; reprinted New York: Johnson Reprint Corporation, 1973), 60-73.

Assembly passed an act providing that "any person" who was "wounded or disabled" as the result of "any Invasion or other publick Military Service" would be "cured and Maintained out of the publick Revenue."<sup>83</sup> It is not clear, however, whether any veterans ever took advantage of the law or how it would have been administered if they had. Nonetheless, the provision was probably perceived to have had a positive effect on the recruitment effort, since the same language was used in the militia act of 1702, at the commencement of Queen Anne's War (1702-13), and in later acts.<sup>84</sup>

In the militia bills enacted during King George's and the French and Indian wars, the provision for medical care to wounded soldiers was augmented by a new clause in the legislation, mandating that in the event of "Invasion or Attack by the Enemy... all Physicians[,] Surgeons and Apothecarys" residing in either New York City or Albany attend the militia "with Medicines & Utencils." Those physicians and apothecaries who demonstrated their public spirit by reporting for duty in accordance with the law would receive payment for their services out of the public treasury. Those who neglected this public responsibility would, in turn, be subject to the stiff £100 fine.<sup>85</sup> Nonetheless, such provisions appear to have been a response to the special circumstances of these two particular wars, since the clause was not included in the militia bill of 1764 and did not reappear in later legislation.<sup>86</sup>

### **New Hampshire**

As a frontier colony, New Hampshire found itself particularly vulnerable to attack by the French and Indians during King William's War. It is therefore not surprising that in January 1696 both houses of the provincial Assembly voted to provide encouragement to "soldiers that are maimed" in the course of their military service in the province and appointed a committee to draw up a bill to that effect. The need for troops was so desperate that the legislators even voted to apply to Massachusetts for an additional complement of fifty soldiers.<sup>87</sup> The bill finally enacted by the assembly "[f]or the better Incouragement of souldiers to adventure their persons" covered the cost of medical care for "any Person within this Province being actually in arms by the command of his officer or as a voluntier" who might be wounded "by the French & Indian Enemie." However, it did

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<sup>83</sup> *The Colonial Laws of New York from the Year 1664 to the Revolution, Including Charters to the Duke of York, the Commissions and Instructions to Colonial Governors, the Duke's Laws, the Laws of the Dongan and Leisler Assemblies, the Charters of Albany and New York, and the Acts of the Colonial Legislatures from 1691 to 1775, Inclusive. Transmitted to the Legislature by the Commissioner of Statutory Revisions, Pursuant to Ch. 125 of the Laws of 1891* (Albany: James B. Lyon, State Printer, 1896), vol. 1, 234.

<sup>84</sup> *Colonial Laws of New York*, vol. 1, 503; the entire 1702 act was continued by an act of 1720 (ch. 385; see *ibid.*, vol. 2, 1). The disability clause was repeated when the militia bill was rewritten in 1724 (ch. 448), 1746; (ch. 816), 1755 (ch. 972), 1764 (ch. 1241), 1772 (ch. 1541) and 1775 (ch. 1700); *ibid.*, vol. 2, 192; vol. 3, 522, 1061; vol. 4, 773; vol. 5, 351, 741.

<sup>85</sup> See "An Act for Regulating the Militia of this Colony," chapter 816, passed February 27, 1746; *Colonial Laws of New York*, vol. 3, 521-22. This act was continued by legislation in 1746, 1747, 1753, and 1754, and the relevant provisions were repeated in the militia bill of 1755. *Colonial Laws of New York*, vol. 3, 621, 648, 962, 1016, 1051-71.

<sup>86</sup> See *Colonial Laws of New York*, vol. 4, 767-77. In fact, under the acts of 1772 and 1775, physicians and surgeons were specifically exempted from militia duty. *Ibid.*, vol. 5, 349, 738.

<sup>87</sup> Nathaniel Bouton (comp. and ed.), *Provincial Papers: Documents and Records Relating to the Province of New-Hampshire. Published by Authority of the Legislature of New-Hampshire* (Manchester: John B. Clarke, State Printer, 1869-1870; reprinted New York: AMS Press, 1973), vol. 3, 39.

not address the issue of pensions or allowances to those who were permanently disabled.<sup>88</sup> In 1725, under the threat of attack from Abenaki Indians, the Assembly adopted a bill "For the Further Encouragement of Voluntiers to go out against the Ind'n Enemy." This act allowed a bounty of £100 per Indian scalp, a daily allowance of two shillings and sixpence to cover expenses, payment for medical care of wounded volunteers, and benefits to those maimed volunteers consistent with benefits already available to maimed soldiers who had been impressed into regular army service.<sup>89</sup>

### New Jersey

In 1709, at the height of Queen Anne's War, Britain determined to enlist colonial support for a joint military expedition against French Canada. Colonel Samuel Vetch of New York, serving as agent for the queen, solicited pledges from the governors of New York, Massachusetts, Rhode Island, New Hampshire, Connecticut, New Jersey, and Pennsylvania to supply their assigned quotas of troops for the mission and coordinated the logistics among the officials of the colonies involved.<sup>90</sup> New Jersey and Pennsylvania were less than enthusiastic about the venture and declined to cooperate in drafting the necessary troops.<sup>91</sup> Nonetheless, the New Jersey Assembly dutifully enacted a bill "for Encouragement of Volunteers to go on the Expedition to *Canada*" that allowed a pension of nine pence per day to any person who "shall happen to loose a Leg or an Arm, or be in any way disabled from Labour, in the said Expedition" for so long as the recipient remained an inhabitant of New Jersey.<sup>92</sup>

During the French and Indian War, the New Jersey Assembly passed a number of bills providing pensions to disabled soldiers. The first of these acts, passed in 1758, provided that disabled soldiers unable to maintain themselves would be supported by the colony "on the same Allowance that other Persons who receive publick Relief usually have." In 1761 a second act sought to provide more specifically for "several Persons within this Government" who had been wounded and "totally disabled from procuring their own subsistence by Labour" by appointing fifteen commissioners "for granting such Relief to the Townships wherein any such disabled persons are" out of funds controlled by the colony's treasurer. This provision was repeated in a budgetary act passed at the end of the war in 1763.<sup>93</sup>

<sup>88</sup> Bouton, *Provincial Papers of New-Hampshire*, vol. 3, 207.

<sup>89</sup> Bouton, *Provincial Papers of New-Hampshire*, vol. 4, 182-83.

<sup>90</sup> Nathaniel C. Hale, *The American Colonial Wars: A Concise History, 1607-1775* (Wynnewood, Pennsylvania: Hale House, 1971), 48; Harry M. Ward, "*Unite or Die*": *Intercolony Relations, 1690-1763* (Port Washington, New York: Kennikat Press, 1971), 54-55.

<sup>91</sup> Hale, *American Colonial Wars*, 48. Hale suggests that their mutual distaste for the expedition resulted from the heavy influence of Quaker pacifism in both colonies. See also Bernard Bush, *Laws of the Royal Colony of New Jersey* [New Jersey Archives, 3rd Series] (Trenton: New Jersey State Library, Archives and History Bureau, 1977), vol. II, 66n. Bush remarks that New Jersey had been expected to contribute 200 volunteers, but that the legislature had "refused to cooperate."

<sup>92</sup> Bush, *Laws of New Jersey*, vol. 2, 66-68.

<sup>93</sup> Bush, *Laws of New Jersey*, vol. 3, 570; vol. 4, 88, 196-97.

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## United States Court of Veterans Appeals

### *Rhode Island*

Rhode Island is, perhaps, singularly distinguished as the only colony to enact legislation providing for war veterans outside of the immediate context of a given war. Moreover, the colony's first pension act, passed in 1718 (five years after the end of Queen Anne's War and some eleven years prior to King George's War), was a model piece of social welfare legislation. In addition to providing medical care and an annual pension ("sufficient to maintain himself and Family") to "any Officer, Soldier or Sailor, that shall be employed by this Colony, against HIS MAJESTIES Enemies," the Rhode Island act provided annual pensions to the dependents of "any Person or Persons... Slain in this Colonies Service," until such time as the dependents "shall happen to Die or be able to Subsist and Maintain themselves." The act included within the definition of a dependent not only the widow and children, but also "Parents or other Relations" whom the deceased had "the charge of Maintaining."<sup>94</sup>

The Rhode Island act differed from those of the other colonies in its administrative provisions as well as in its generosity. Where Virginia and Maryland laws directed the counties (and specifically the county courts) to manage the allotment of benefits to veterans, the Rhode Island act delegated that authority to "the Town Council of each Respective Town in this Colony."<sup>95</sup>

### *North Carolina*

North Carolina apparently made no provision for its war veterans prior to 1746. Pressed by the exigencies of King George's War to take action on behalf of its soldiers, however, the colonial legislature passed pension legislation in the June legislative session that year. This act "for the Better regulating the Militia of this Government" specified that any person who, during military service to the colony, became "so disabled" that he could not "maintain himself or pay for his Cure" would receive medical care paid for out of the public treasury, as well as "one good Negro Man," purchased at public expense, "for his maintenance." The same allowance was extended to the widow or family of anyone killed while in the colony's service.<sup>96</sup> These provisions were repeated in the militia bill passed at the beginning of the French and Indian War.<sup>97</sup>

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<sup>94</sup> *Acts and Laws, of His Majesties Colony of Rhode-Island, and Providence Plantations in America* (Boston: John Allen, for Nicholas Boone, [1719]), 94-95. The language of this act appears to suggest that invalid pensions were provided only to those enlisted in the regular army, while dependent pensions were provided to the families of both regular army soldiers and militia men.

<sup>95</sup> *Acts and Laws of Rhode-Island*, 94-95.

<sup>96</sup> Laws of the 1746 Session, ch. 1, § 9; Walter Clark, *The State Records of North Carolina. Published Under the Supervision of the Trustees of the Public Libraries, by Order of the General Assembly* (Goldsboro, North Carolina: Nash Brothers, Book and Job Printers, 1905), vol. 23, 246.

<sup>97</sup> See "An Act for the better Regulating of the Militia, and for other Purposes," 1754-56 Session ch. 2, § 4; Clark, *The State Records of North Carolina*, vol. 25, 335.

### **South Carolina**

The first legislative provision for war veterans in South Carolina was also adopted during King George's War. Although enacted only a year after the North Carolina bill, the 1747 South Carolina law was much more elaborate in its specifications and was evidently designed primarily to encourage enlistments at all levels of society. For example, while the North Carolina law appeared to incorporate only free white men serving in the militia or the regular army, the South Carolina act also addressed military participation by both white indentured servants and black slaves. According to this act, every poor white (whether an indigent freeman or a servant) who "shall boldly and cheerfully oppose the common enemy" and was maimed or disabled as a result of his service was eligible for an annual pension of £12 if single or £18 if married; a soldier's widow or dependent children were similarly eligible for a pension of £12 per year.<sup>98</sup>

Moreover, the act also promoted the participation of "faithful" slaves in the colony's defense. To this end, the act included sections that specified how masters were to enlist their slaves in the militia and a method for valuation of a slave in the event the slave were killed and the colony was required to compensate his owner. Nevertheless, slave participation in the militia necessarily created a two-tiered system of punishments and rewards that extended into the benefits granted to veterans. While freemen could be fined for infractions of military discipline, a fine would have no effect on the slave-soldier who not only had no money but was also the financial responsibility of another. Rewarding a slave for military service was another complication; a monetary pension would have no value to the veteran if his owner were the one legally entitled to receive it. The 1747 act attempted to cover these contingencies by providing a separate system of rewards and punishments geared toward the more limited social and economic status of the slave. Slaves were thus subject to corporal punishment for violations of military law, but if a slave were to "actually engage the enemy in times of invasion of this Province, and shall courageously behave [himself] in battle, so as to kill any one of the enemy, or take a prisoner alive, or shall take any of their colours" he would thereby gain his freedom.<sup>99</sup> Moreover, if a slave were to act courageously without managing either to kill the enemy or to take enemy prisoners or the enemy colours, he would receive annually a suit of clothes consisting of "a livery coat and pair of breeches made of good red negro cloth, turned up with blue, and a black hat and pair of black shoes" and would be exempted "from all personal labour and service to their owner or manager" on the anniversary date of the encounter.<sup>100</sup> Owners of slaves given their freedom by virtue of their military service would be fully compensated out of the public treasury using the same valuation method set out for compensating owners whose enlisted slaves had been killed.

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<sup>98</sup> David J. McCord, *The Statutes at Large of South Carolina; Edited, Under Authority of the Legislature* (Columbia: A.S. Johnston), vol. 9, 660-61.

<sup>99</sup> "An Act for the better regulating the Militia of this Province, and for repealing an Act entitled an Act for the further security and better defense of this Province," §§ 39, 41; McCord, *Statutes at Large of South Carolina*, vol. 9, 659, 660-61. White servants who killed or captured the enemy, or took the enemy colors, could also expect to gain freedom from servitude. *Ibid.*, vol. 9, 660-61.

<sup>100</sup> "An Act for the better regulating the Militia of this Province...", § 41; McCord, *The Statutes at Large of South Carolina*, vol. 9, 660-61.

Although the provisions for military service by slaves appear to provide some reward of value to the enlisted slave, the means set out in the act for administering this system of rewards probably rendered the act of little practical effect as far as the slave veteran was concerned. Whites who sought benefits under the act had to produce certificates from the majority of the field officers of the regiment to which they belonged specifying their service and eligibility for pensions. Similarly, servants and slaves who sought their freedom had to obtain certificates from a field officer (or the captain of any company) who had either witnessed the action in which the servant or slave had been involved, or taken the testimony of "two creditable white persons" under oath.<sup>101</sup> The reliance upon the testimony of whites to validate the slave veteran's claim to freedom may well have nullified the chances of many slaves who served "courageously" to obtain the benefits promised under this act. An additional indication that the slave benefit clauses may not have worked as they were presumably intended is that they were not included when the militia bill was reenacted in 1778.<sup>102</sup>

### *Georgia*

The militia bill enacted by the first Georgia legislature in 1755 was virtually identical to the South Carolina militia bill of 1747.<sup>103</sup> Unlike South Carolina, however, the Georgia Assembly repeated the slave clauses in the militia bill of 1773, and even reduced the validation requirement to the testimony of any single field officer or the oath of one creditable white person.<sup>104</sup>

### *Pennsylvania, Delaware, and Connecticut*

The three remaining colonies apparently had no legislative provisions for benefits to veterans prior to the Revolutionary War. This was due, in the case of Pennsylvania, to the fact that the colony had no militia prior to 1755. Under the Duke of York's Laws, which were in force in the colony between 1676 and 1682, the governor had the authority to raise volunteers for the purpose of providing military assistance to the other colonies, but could not impress men as soldiers for the colony's own use.<sup>105</sup> The Quaker politicians who controlled the Pennsylvania Assembly were devoutly

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<sup>101</sup> "An Act for the better regulating the Militia of this Province....", § 41; McCord, *The Statutes at Large of South Carolina*, vol. 9, 660-61.

<sup>102</sup> See "An Act for the regulation of the Militia of this State, and for repealing such laws as have hitherto been enacted for the Government of the Militia," Enacted March 28, 1778 as ch. 1076, §§ 30-33; McCord, *The Statutes at Large of South Carolina*, vol. 9, 679-80. While the 1778 act retained the provisions for enlisting slaves (see §§ 30-32, 679-80), from this time forward neither slaves nor white servants who served in the militia could earn freedom from servitude by virtue of their military service (see § 33, 680).

<sup>103</sup> Allen D. Candler, *Colonial Records of the State of Georgia; Compiled and Published Under Authority of the Legislature* (Atlanta: Georgia State Printing Office, 1904-16; reprinted New York: AMS Press, Inc., 1970), vol. 18, 41-44.

<sup>104</sup> Candler, *Colonial Records of Georgia*, vol. 19, 326-29. However, the slave clauses were finally removed in 1784. See "An Act For Revising and amending the several Militia Laws of this State," dated February 26, 1784; *ibid.*, vol. 19, part 2, 348-59.

<sup>105</sup> Staughton George, Benjamin M. Nead, and Thomas McCamant, *Charter to William Penn and Laws of the Province of Pennsylvania, Passed Between the Years 1682 and 1700, Preceded by Duke of York's Laws in Force from the Year 1676 to the Year 1682, with an Appendix Containing Laws Relating to the Organization of the Province Courts and Historical Matter. Published under Direction of John Blair Linn, Secretary of the Commonwealth* (Harrisburg: Lane S. Hart, State Printer, 1879), 42-43.

committed to pacifism and friendly relations with local Indians. As a result, Pennsylvania apparently suffered little of the Indian depredations that beset the other North American colonies. A letter to the Lords of Trade and Plantations from the Pennsylvania legislature in 1718, seeking approval of an act designed to further the friendship with the Indians, noted that "[t]hese dreadful mischiefs [in the other colonies] might probably have been prevented had care been taken to observe some such like means as is proposed in this act, in treating and dealing with the Indians honestly."<sup>106</sup> The commitment to pacifism extended beyond the concept of self defense. Even regular army troops were not stationed in the colony; servants fleeing their masters had to travel all the way to New Jersey to enlist themselves in the service of the Crown.<sup>107</sup> When the legislature finally agreed to the establishment of a militia in 1755, the preamble of the bill noted that a significant shift in the colony's demographics had been responsible for the change in policy.<sup>108</sup> Despite the organization of a militia, however, no provisions were made for pension or other benefits to disabled soldiers or dependents. Two bills enacted for the purpose of raising troops to send to South Carolina and New York during the French and Indian War maintained this silence with respect to disabled veterans.<sup>109</sup>

Neighboring Delaware, although it raised troops for regular army service during both King George's War and the French and Indian War, also appears not to have considered the issue of providing for the soldiers participating in these wars. While commissions granted to officers in 1746 authorized the payment of a cash bounty to the new recruits, they were silent on the question of invalid pensions for those recruits who might become disabled in the course of the fighting.<sup>110</sup>

Connecticut, while it participated in the majority of various Indian wars, which broke out in New England during the seventeenth and eighteenth centuries, apparently never had a formal system for providing benefits to war veterans. The lack of a formal system, however, does not mean that the colony entirely failed to provide benefits to veterans. Extant records indicate that after the Pequot

<sup>106</sup> James T. Mitchell and Henry Flanders, *The Statutes at Large of Pennsylvania from 1682-1801, Compiled under the Authority of the Act of May 19, 1887* ([Harrisburg:] Clarence W. Busch, State Printer of Pennsylvania, 1896), vol. 3, 451-52.

<sup>107</sup> See "An Act for Raising Two Thousand Pounds for the Queen's Use...", chapter 182, §§ 10-11; Mitchell and Flanders, *Statutes of Pennsylvania*, vol. 2, 398. The referenced sections attempt to address the problem of "several apprentices and bought servants" who had "left their masters... and enlisted themselves in the Queen's service in the Province of New Jersey."

<sup>108</sup> See "An Act for the better ordering and regulating such as are willing and desirous to be united for military purposes within this province," chapter 405, passed November 25, 1755; Mitchell and Flanders, *Statutes of Pennsylvania*, vol. 5, 197-98. The preamble states that the Quakers, while not condemning others for desiring to "bear arms," had found it unconscionable to compel anyone to do so in prior years. While the preamble avers that the recent immigrants of other denominations were entitled to the same "liberty of conscience" that the Quakers had sought for themselves in establishing the colony, the policy change was more likely caused by the "great number of petitions from the several counties... [that] have been presented to this house, setting forth that the petitioners are very willing to defend themselves and their country..." than to Quaker toleration.

<sup>109</sup> See "An Act empowering the Governor to discharge his part of the operations of this campaign stipulated in behalf of this province between His Excellency John, Earl of Loudon, and the Governors of the Southern colonies," 1756-57 Session ch. 424, and "An Act to enable the Governor to draw out and march one thousand men, part of the troops of this province, or the like number of volunteers to be raised, for the assistance of the Province of New York," 1756-57 Session ch. 425; Mitchell and Flanders, *Statutes of Pennsylvania*, vol. 5, 309-13.

<sup>110</sup> *Delaware Archives: Military. Published by the Public Archives Commission of Delaware by Authority* (Wilmington: Press of Mercantile Printing Co., 1911-12), vol. 1, 3. The commission granted by Thomas to Captain John Shannon specified that recruits were to receive \$1 on enlisting and another sum (three pistoles in gold) "before they go out of this Province, for the Support of their Families in their Absence, or to be laid out in such other manner as they shall think fit."

## United States Court of Veterans Appeals

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War (1636-38), the proprietors of the Hartford colony set aside a tract of land for the use of the returning soldiers. Denoted thereafter as "Soldier's Field," the tract was apportioned into lots conveyed to veterans as a reward for their service to the colony. The records indicate that some soldiers owned lots that were two or three times the size of lots held by other soldiers of the same rank; and since not all of the veterans held lots in Soldier's Field, it would appear that the right to a lot could be conveyed from one veteran to another.<sup>111</sup> That rights to a lot were also deemed to be inheritable is suggested by the fact that a son successfully petitioned for a grant in Soldier's Field based on his father's military service.<sup>112</sup>

The informal structure for the provision of benefits to veterans became evident in the course of the French and Indian War, when soldiers disabled as a result of the various colonial expeditions against French forces in Canada and New York found their primary means of redress was to present a memorial to the colony's assembly. Because of the lack of any formal legislative guidance with respect to the compensation of invalid soldiers, Connecticut's wounded and disabled soldiers were able to seek relief by means other than the simple cash pension allowed by other colonies. Elijah Fitch of Ashford, for example, petitioned the General Court in 1757 for the liberty to peddle English goods without paying tax on them for two years. Matthias Smith of Lebanon merely sought a licence to peddle without paying the requisite licensing fee.<sup>113</sup> Disabled Revolutionary War veterans later petitioned the legislature for such diverse relief as abatement of their Continental and state taxes, payment of their medical expenses, or for rations during the period of their recovery from illness or injury, as well as for payments in cash.<sup>114</sup>

### **Role of the Courts in the Colonial Period**

Throughout the colonial period, the courts played a varied role in the administration of veterans benefits. In the New England colonies, for example, the courts appear to have had a negligible role in determining eligibility for benefits. Rather, veterans seeking assistance were likely to submit a petition to the assembly requesting action on their respective cases. When the increasing number of such cases became a nuisance, standing committees were formed to hear the petitions and recommend action to the assemblies as a whole. As an alternative, the New England assemblies enacted legislation delegating the authority to act on the needs of veterans to the individual towns in which they resided. This grant of authority was consistent with the governmental structure established within the New England colonies by the original Puritan settlers--a structure that preserved, as much

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<sup>111</sup> James Shepard, *Connecticut Soldiers in the Pequot War of 1637; with Proof of Service, a Brief Record for Identification, and Reference to Various Publications in Which Further Data May Be Found* (Meriden, Connecticut: Journal Publishing Company, 1913), 5-7.

<sup>112</sup> Shepard, *Connecticut Soldiers in the Pequot War*, 31.

<sup>113</sup> Charles J. Hoadley, *The Public Records of the Colony of Connecticut; Transcribed and Edited, in Accordance with Resolutions of the General Assembly* (Hartford: Press of Case, Lockwood and Brainard, 1868-1881), vol. 11, 164-65, 189-90. Both petitions were granted.

<sup>114</sup> Charles J. Hoadley and Leonard Woods Labaree, *The Public Records of the State of Connecticut; Compiled in Accordance with a Resolution of the General Assembly* (Hartford: Press of The Case, Lockwood & Brainard Company and The State of Connecticut), vol. 3, 550; vol. 5, 421, 458; vol. 6, 211. In 1786, one veteran even petitioned the legislature (successfully) for permission to use his State order for a pension to "discharge his State Taxes."

as possible, local control over governmental decision-making, particularly with respect to the militia.<sup>115</sup>

The Chesapeake colonies, on the other hand, exhibited an entirely different policy in regard to the role of the courts. In Maryland, for example, the courts early on played an active role in both the determination of eligibility for and the delivery of benefits to veterans and their dependents. While Maryland law vested county courts with the authority to hear petitions and make determinations of benefits, veterans might also appeal to the provincial court in cases where the county court was not able to provide satisfaction.<sup>116</sup> Virginia likewise vested the several county courts with the authority to hear veterans benefits claims; Virginia's highest courts continued to hear claims for invalid pensions promised by commonwealth law for service during the Revolution through the 1830s.<sup>117</sup>

The remaining colonies were somewhat more diverse in their adjudication of benefits to veterans. New Jersey, in appointing a committee to oversee the provision of funds to the towns for the relief of disabled veterans, more closely resembled the New England example. It is not readily known, however, whether the remaining colonies more closely followed the model established by the Chesapeake colonies or that of New England.

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<sup>115</sup> Timothy H. Breen, "Persistent Localism: English Social Change and the Shaping of New England Institutions," in *Puritans and Adventurers*, 18-24.

<sup>116</sup> In January 1666, Garrett Sennett and Ralph Wormeley presented themselves at the Charles County Court after having been wounded "by Casuall shott" during the recent march to Piscataway. After hearing their evidence, the commissioners ordered them to "draw up a Bill of the charges and damage... Receaved thereby" for certification to the Provincial Court, so "that they may be relieved by publique levie." Browne, *Archives of Maryland*, vol. 60, 55. In October, the two appeared before the Provincial Court petitioning for reimbursement of their costs: Sennett asked for a return of the 1,300 pounds of tobacco "disbursed by him for the Cure" of his wounds, while Wormeley sought redress for "One thowsand pounds of tobacco and loss of two months labour being a Carpenter by trade." But their statements of cost had not been certified by the Charles County commissioners, and the Provincial Court therefore ordered the accounts back to the county court for certification. *Ibid.*, vol. 57, 130, 148. In April 1667, the Charles County commissioners finally certified the "Charge and Expence of Ralph Wormely and Garrett Sennetts by being shott att Piscattaway" at 1,900 pounds of tobacco for Wormeley and 3,200 pounds of tobacco for Sennett, and those amounts were ordered by the Provincial Court "to be put into the next Publique Leavy." *Ibid.*, vol. 57, 173. However, the process of obtaining relief did not necessarily entail such a large commitment of time. When Daniel Jones and William Smith were wounded in January 1668, the chancellor submitted a letter on their behalf to the Talbot County Court while they still lay afflicted. Since they were unable to make a personal appearance, the Court could only order that they "remaine where they now are untill their afore said wounds be Cured and their abillity made appeare att this Court whereby further order and Care may bee taken for theire meaintinance." *Ibid.*, vol. 54, 415. When William Smith finally made an appearance two months later, the Court ordered "that hee have for this present yeare" an allowance of 1,500 pounds of tobacco, and "that mr Edmundson have five hundred pounds of Tobacco for [Smith's] accomodations for the time hee was att [Edmundson's] house." *Ibid.*, vol. 54, 419. Calvert County resident Francis Burton, who "received a Wound by Gun shott in his Thigh" while serving at the Susquehannah fort, petitioned the Provincial Court for medical assistance in February 1679 because he had "noe Chirurgion to dresse [the wound] and endeavor his Cure" and his thigh was "now in a perishing condicon...." Since Burton had already been certified to the Provincial Court for a pension (the Court record notes that he was already receiving an allowance of 1,600 pounds of tobacco and had requested an increase), the Provincial Court swiftly rendered its decision, appointing the surgeon Edward Mollins to "take care of the said ffrancis Burton to dresse him and endeavor his cure" and increasing Burton's allowance by 400 pounds of tobacco on the very day of his appearance before the Court. *Ibid.*, vol. 69 115-16.

<sup>117</sup> See *A Statement of the Judgments Rendered at the Last Superior Court of Henrico [County], for Half Pay Claimed by Officers of the Virginia Line, During the Revolutionary War...* (Richmond: Virginia Auditor of Public Accounts, 1831), 3-4.

### **Consolidation of Veterans Benefits, 1764-76**

Prior to the onset of the French and Indian War, the colonies had been able to conduct their military affairs in something of a piecemeal fashion. Each colony acted as a duly constituted sovereign power and responded to its own military crises; each of the colonial assemblies assumed authority to deploy regular army troops and militia maintained within its jurisdiction as it saw fit. Thus, while one colony might provide assistance to another colony in need, such assistance was granted as an act of generosity rather than given out of mutual self interest. Accordingly, when attempts arose to stage joint military expeditions among several colonies, each colony felt itself free either to participate or decline to do so, as was consistent with its individual sense of the threat at hand.

The French and Indian War marked the beginning of a significant shift in British military policy. During the war, the Crown for the first time imposed an overall military strategy, thus attempting to coordinate the activities of the colonial legislatures. In the colonies, this move was perceived as a clear usurpation of the legislative prerogative of the colonial assemblies and was strenuously resisted.<sup>118</sup> Nonetheless, it was clear by 1764 that these attempts to force colonial coordination were having an effect on the process of government. The Stamp Act Congress in New York in 1765, for example, grew out of colonial consensus that the thirteen colonies needed to work together voluntarily if they were to defeat the Crown's attempts to overrule their individual sovereignty and force their compliance with the dictates of the king in Parliament.<sup>119</sup> Colonial coordination also led, over time, to a growing consistency in the colonies' approach to veterans benefits.

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<sup>118</sup> Lawrence D. Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812* (Chapel Hill: University of North Carolina Press, 1982), 9-11.

<sup>119</sup> The Stamp Act, passed by Parliament in 1765, imposed on the colonies the odious requirement that an official seal (that is, a "stamp") be attached to every single piece of paper sold in the colonies. The stamps, or pre-stamped paper, could only be had for a prescribed fee intended to raise revenues for the Crown. Colonists regarded these provisions as unnecessarily burdensome to the conduct of business and an infringement on their personal liberty. For the first time, delegates from all of the colonies were assembled to discuss a joint response. The Stamp Act Congress culminated in a formal protest to the King, and the Act was repealed by Parliament shortly thereafter. See Ian R. Christie, *Crisis of Empire: Great Britain and the American Colonies, 1754-1783* [Foundations of Modern History Series] (New York: W. W. Norton, 1966), 57; James A. Henretta and Gregory H. Nobles, *Evolution and Revolution: American Society, 1600-1820* (Lexington, Massachusetts: D. C. Heath, 1987), 129-34.

## UNITED STATES

### Further Consolidation under the Continental Congress, 1776-89

#### *Pensions for Continental Service*

The inconsistent pattern of veteran's benefits in the colonial period began to change almost as soon as the Revolutionary War with Britain broke out in 1775 (see fig. 2). By August 1776, the Continental Congress had adopted a resolve that any officer or soldier of the Continental Army "who shall lose a limb or be disabled in the service of the United States" would receive half pay during the continuance of the disability on producing a certificate from his commanding officer and the surgeon in attendance. The same resolve recommended that each state appoint a person to "receive and examine all such certificates, and register the same in a book."<sup>120</sup> A second pension resolve, adopted in April 1782, gave the inspector general of the Continental Army the authority to discharge those who were sick or wounded and unfit for further duty in the Invalid Corps with a pension of \$5 per month "in lieu of all pay and emoluments."<sup>121</sup> The resolve recommended that the states "discharge such pensions annually" and apply to the superintendent of finance "for the payment of the money they shall so advance."<sup>122</sup>

These two resolves provided the states with the authority to charge the Continental Congress for the funds expended in providing for disabled Continental Army soldiers. In compliance with these directives, a number of state legislatures appointed committees for the purpose of examining claims for invalid pensions and compiled lists of those so entitled. New Hampshire began the process in 1777, Rhode Island in 1786, and Delaware in 1787; by October 2, 1788, Congress also had received such lists from Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, and Virginia.<sup>123</sup>

In 1785, the Continental Congress adopted a third invalid pensions resolve, recommending to the states adopted a uniform method of determining eligibility for invalid pensions for service in the Continental Army. The system was to provide that each state appoint an official to examine and

<sup>120</sup> Worthington Chauncey Ford, Gaillard Hunt, John C. Fitzpatrick, and Roscoe R. Hill [Manuscripts Division, Library of Congress], *Journals of the Continental Congress, 1774-1789. Edited from the Original Records in the Library of Congress...* (Washington: GPO, 1904-37), vol. 5, 702-05.

<sup>121</sup> The Invalid Corps was devised by Congress in 1777 to utilize sick and wounded soldiers able to perform garrison duty and other routine tasks, thus liberating the able-bodied men originally assigned to such duties for action on the field. See Ford, *Journals of the Continental Congress*, vol. 7, 288; vol. 8, 485, 554, 585, 690.

<sup>122</sup> Ford, *Journals of the Continental Congress*, vol. 22, 209-11. By the end of the war, the Continental Congress had become considerably behind in its payments to the Continental Army. Thus, by the time of this resolve most soldiers were entitled to substantial back wages for their military service in the Revolution.

<sup>123</sup> Nathaniel Bouton, *State Papers. Documents and Records Relating to the State of New Hampshire*. Published by Authority of the Legislature of New Hampshire (Concord: Edward A. Jenks, State Printer, 1874), vol. 8, 524, 538, 973-75; John Russell Bartlett, *Records of the Colony and State of Rhode Island and Providence Plantations in New England*. Printed by Order of the General Assembly (Providence: A. Crawford Greene, State Printer, 1856-1865; reprinted New York: AMS Press, Inc., 1968), vol. 10, 162-68, 198, 227; *Delaware Archives: Military*, vol. 2, 716-17; Ford, *Journals of the Continental Congress*, vol. 34, 873.

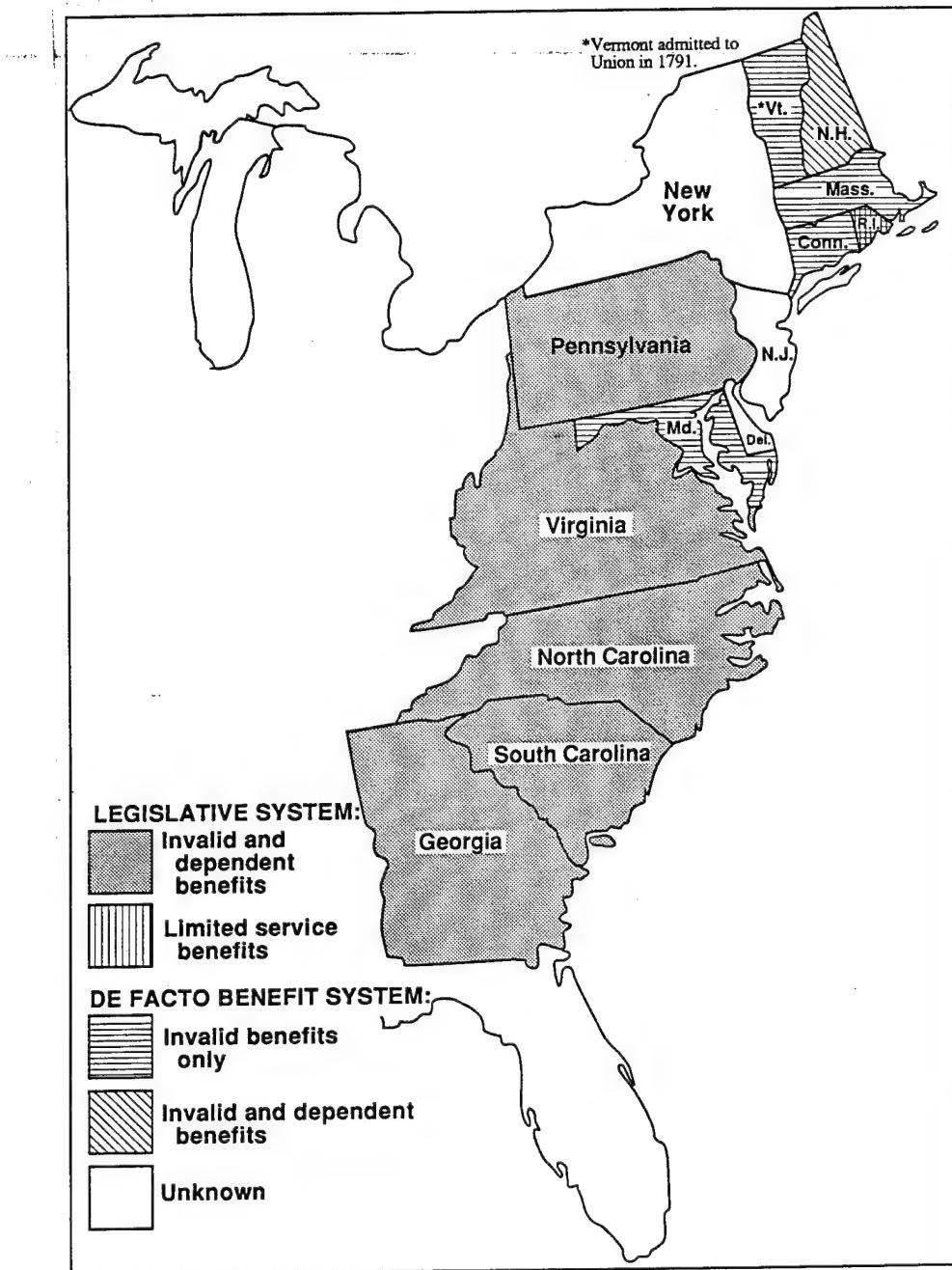


Figure 2. Pension Benefits for State Service in the Revolutionary War, as of March 4, 1789

register claims and to make payments on those accepted. The resolve authorized the states to deduct the amounts expended for invalid pensions from each state's respective annual contribution to the Confederation of States; in return, each state was to submit annually a revised list of all pensioners that specified their service, disability, age, and rate of pay.<sup>124</sup>

Several states quickly followed the recommendations of this resolve. Virginia, in an October 1785 law, directed the governor to examine and certify each claimant; thereafter, pensioners had to appear at the county courts each year in May or June, produce the governor's certificate, and swear to its authenticity. The Virginia county courts were then empowered to order such claims recorded in the county records and authorize payment out of county funds (to be later reimbursed from the state treasury).<sup>125</sup> In October 1786, the Connecticut legislature directed the judges of the state's Court of Common Pleas for each county to examine all soldiers disabled in the service of the United States, "and to Certify such disability with the Pay to which the Person so disabled is entitled"; the State Comptroller of Public Accounts was directed "to receive and record said Certificates..., to make out a List of them, and to draw Orders for payment."<sup>126</sup> North Carolina in December 1785 and Georgia in February 1786 had already adopted similar laws. They differed from the Connecticut law in appointing special commissioners to examine claims and in requiring claimants to annually swear to the verity of their pension claims before the county judges, but were substantially the same in all other respects.<sup>127</sup> Delaware and New Hampshire enacted derivative statutes in 1787;<sup>128</sup> Rhode Island, as indicated above, had already formed a standing legislative committee for this purpose. Payments of invalid pensions for service in the Continental Army continued to be made at the state level until 1789, when Congress, acting under the enlarged powers granted by the new Federal Constitution, assumed the financial burden of the pension obligation for the Continental Army.<sup>129</sup>

### *Pensions for State Service*

Troops who served in the war as members of the state militia, or in some other voluntary capacity, were not covered by the invalid pension resolves of the Continental Congress. Accordingly, the individual states were left with the responsibility of providing for disabled soldiers and dependents of slain soldiers who had been specifically enlisted in the service of the state. Although

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<sup>124</sup> Ford, *Journals of the Continental Congress*, vol. 28, 51-52, 310-12, 435-37.

<sup>125</sup> See "An Act to amend the act concerning pensioners," enacted October 1785 as ch. 44, §§ 4, 5; Hening, *Statutes of Virginia*, vol. 12, 104-5.

<sup>126</sup> Hoadley, *Records of the State of Connecticut*, vol. 6, 232.

<sup>127</sup> Clark, *The State Records of North Carolina*, vol. 24, 735-37 (Laws of the 1785 Session, ch. 14); Candler, *Colonial Records of the State of Georgia*, vol. 19, part 2, 518-22.

<sup>128</sup> *Laws of the State of Delaware, from the Fourteenth Day of October, One Thousand Seven Hundred, to the Eighteenth Day of August, One Thousand Seven Hundred and Ninety-Seven. In Two Volumes. Published by Authority* (New Castle: Samuel and John Adams, 1797), vol. I, 892 (Chapter 147b); Bouton, *State Papers of New Hampshire*, vol. 16, 325-29.

<sup>129</sup> See "An Act providing for the payment of the Invalid Pensioners of the United States," 1st Cong., 1st Session, ch. 24; *The Statutes at Large of the United States of America, from the Organization of the Government in 1789 to Concurrent Resolutions of the two Houses of Congress and Recent Treaties, Conventions, and Executive Proclamations. Edited, Printed and Published by Authority of Congress, under the Direction of the Secretary of State* (Boston: Little, Brown and Company, 1845-1873; Washington, GPO, 1875), vol. 1, 95.

it had no power to compel conformity to a joint standard, the Continental Congress, as a body representing the collective law-making effort of all thirteen states, exercised a certain *de facto* influence over legislative developments in each individual state. Thus, for many of the states, the clearest example to follow was not that from the historical precedent of their own colonial experience but that of the new unified government under the Continental Congress and the Articles of Confederation.

Virginia and Pennsylvania had used invalid and dependent pensions as a recruiting tool at the beginning of the war. Two statutes enacted in 1775 promised Virginia's recruits, whether a "regular..., minute, or militia-m[a]n," an invalid pension if disabled.<sup>130</sup> During the course of the war, the Virginia House of Burgesses began using bounty payments in money, as well as tax exemptions and invalid pensions, to entice potential recruits into military service. Moreover, the ratio of the proffered benefits escalated substantially during the course of the war. In December 1775, for example, an enlistee could anticipate a cash bounty of 20 shillings, a pension in the event he were disabled, and an exemption from his personal taxes while he was in active service.<sup>131</sup> But by May 1778, a Virginia recruit for the Continental Army had the right to expect a cash bounty of \$150 if he enlisted (or reenlisted) for the duration of the war (or \$100 if he enlisted for a term of three years), a lifetime exemption from "the payment of all levies and taxes for [his] own person...", and an invalid pension--in the event he were disabled--of "full pay during life, to commence at the time of... discharge."<sup>132</sup> Within six months, the House of Burgesses had begun to promise new recruits a cash bounty of \$300 for an eighteen-month enlistment or \$400 for three years or longer, in addition to clothing, Continental land bounties, and an invalid pension consisting of full pay for life.<sup>133</sup> In addition, Virginia began adopting provisions for pensions to widows and orphaned children relatively early in the war. In October 1777, for example, the House of Burgesses ordered the county courts "to make a reasonable provision at the publick expense for the immediate support of the widows within their respective counties whose husbands shall have died or been slain in the service of the commonwealth, or the United States"; a second bill in 1778 extended benefits to widows future war casualties.<sup>134</sup> Pennsylvania was also swift to act, passing a statute in March 1777 which authorized invalid pensions for Pennsylvania soldiers engaged either in the state service or in the service of the United States, as well as to their dependents.<sup>135</sup> A second statute, passed in September 1777, offered relief to disabled soldiers and sailors in the service of the United States and closely followed the plan of the Resolve of Congress adopted the preceding August.<sup>136</sup> Maryland followed

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<sup>130</sup> Hening, *Statutes of Virginia*, vol. 9, 14, 90-91.

<sup>131</sup> Hening, *Statutes of Virginia*, vol. 9, 90-91.

<sup>132</sup> Hening, *Statutes of Virginia*, vol. 9, 454-56.

<sup>133</sup> See "An act for speedily recruiting the Virginia regiments on Continental establishment," October 1778 Session ch. 45; Hening, *Statutes of Virginia*, vol. 9, 588-92.

<sup>134</sup> Hening, *Statutes of Virginia*, vol. 9, 344-45, 566.

<sup>135</sup> See "An Act to Regulate the Militia of the Commonwealth of Pennsylvania," ch. 750, §§ 28 and 29, enacted March 17, 1777; Mitchell and Flanders, *Statutes of Pennsylvania*, vol. 9, 88-89.

<sup>136</sup> See "An Act making provision for the relief of officers, soldiers, marines, and seamen, who in the course of the present war, being in the service of the United States of America have been or shall be maimed or otherwise disabled from getting their livelihood and shall be resident in or belong to the State of Pennsylvania," ch. 763, enacted September 18, 1777; Mitchell and Flanders, *Statutes of Pennsylvania*, vol. 9, pp. 140-45. The preamble of this law quotes the August 1776 Resolve at length.

the lead established by Pennsylvania, enacting an identical law within the following thirteen months (for a list of key pension legislation for all wars prior to 1914, see Appendix C).<sup>137</sup>

Other states used pension benefits primarily as a poverty relief measure rather than as a means of boosting recruitment to the militia. The North Carolina invalid pension statute, for example, was enacted in June, 1781, well after disabled soldiers had begun petitioning the legislature for relief. Like prior legislation in Maryland and Virginia, this bill required disabled veterans and the dependents of deceased soldiers and sailors to make application to the county court for the county in which they resided. The justices of the county courts were empowered to "set forth what sum shall be necessary for their support and maintenance"; the pension allowance determined by the court was paid out of funds raised for that purpose and administered by the overseers of the poor.<sup>138</sup> Rhode Island took action in a similar fashion. When the legislature's standing committee on relief to disabled soldiers began accepting petitions from invalids in 1782, it considered--and acted on--those who were not eligible for United States pensions along with those who were eligible.<sup>139</sup> In 1785, moreover, the legislature passed an act directing towns to provide relief to former slaves who had enlisted in the Continental Army under a Rhode Island statute of 1778 and were now either sick or indigent.<sup>140</sup>

The individual states apparently continued to pay invalid pensions for state service as late as 1808, when Congress passed a special act to assume the burden of the state invalid pension rolls for Revolutionary War veterans.<sup>141</sup> The states continued thereafter to provide benefits to veterans. These ranged from special transportation privileges for disabled veterans, to exemption from jury service, to special bonuses for war veterans, to educational benefits. In southern states, domiciliary care and burial expenses, among other benefits, were provided for Confederate veterans of the Civil War (1861-65).<sup>142</sup>

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For a description of the application of this statute, see also, Samuel Hazard, *Pennsylvania Archives. Selected and Arranged from Original Documents in the Office of the Secretary of the Commonwealth, Conformably to Acts of the General Assembly, February 15, 1851, & March 1, 1852* [First Series] (Philadelphia: Joseph Sevens & Co., 1854-1855), vol. 9, 586-88.

<sup>137</sup> See "An Act for the relief of disabled and maimed officers, soldiers, marines, and seamen," enacted October 1778; Browne, *Archives of Maryland*, vol. 18, 624-26. This law, in a fashion similar to the September 1777 Pennsylvania statute, repeated the provisions enacted by the Continental Congress in the Resolve of August 1776.

<sup>138</sup> See "An Act to relieve all such persons as are rendered incapable of Procuring themselves and families subsistence, by reasons of wounds received in defence of their country, and for other purposes," June 1781 Session ch. 15, §§ 2, 3, 8; Clark, *The State Records of North Carolina*, vol. 24, 409-10. A similar bill was passed in the April 1784 session. See "An Act for the relief of such persons as have been disabled by wounds or rendered incapable of procuring for themselves and families subsistence in the Militia Service of this State, and providing for the Widows and Orphans of such as have died," April 1784 Session ch. 16, §§ 1-2; *ibid.*, vol. 24, 568-69.

<sup>139</sup> Bartlett, *Records of the State of Rhode Island*, vol. 9, 530-31, 637, 696-97.

<sup>140</sup> See "An Act for the support of the paupers, who heretofore were slaves, and enlisted into the Continental battalions," February 1785 Session; Bartlett, *Records of the State of Rhode Island*, vol. 10, 85.

<sup>141</sup> See "An Act concerning invalid pensioners," passed April 25, 1808, 10th Congress, 1st Session, ch. 58; *United States Statutes at Large*, vol. 2, 591.

<sup>142</sup> United States, House of Representatives, Committee on Veterans' Affairs, Ninetieth Congress, 1st Session, *State Veterans' Laws: Digests of State Laws Regarding Rights, Benefits, and Privileges of Veterans and Their Dependents, Revised to July 1, 1967* (Washington: GPO, 1967).

**Federal Administration of Veterans Affairs, 1789-1990**

***Formation of Structure for Pension Administration, 1789-99***

The end of the Revolutionary War created mass confusion with respect to war veterans. Under the Articles of Confederation, ratified in 1783, Congress only had the power to recommend legislation to the states in regard to veterans of the war; the states might accept, modify or refuse to adopt such recommendations as they saw fit. After Congress recommended, in June 1785, that the states adopt legislation providing pensions for those wounded in the service of the United States, seven states (Virginia, North Carolina, Georgia, New York, Connecticut, New Hampshire, and Delaware) quickly devised appropriate legislation while at least one state (South Carolina) declined to take any action.<sup>143</sup> The inefficiency and inequity of this system aroused many veterans, particularly officers, to push for the establishment of a stronger national government in order to ensure uniform treatment. In fact, veterans of the war were among the strongest advocates of the Federal Constitution.

The ratification of the Constitution had a significant impact on the provision of benefits to war veterans. The Constitution gave Congress the power to enact legislation with respect to Federal affairs, including military service to the United States during any war. Moreover, the new Executive branch of the Federal government retained the authority under the Constitution to administer all services provided by the Federal government. This meant, in effect, that benefits to veterans—at least for service to the United States, as in the Continental Army—might be coordinated through a single governmental unit instead of thirteen different ones. Yet the adoption of the Constitution did not signify immediate clarification as to the administration of benefits for veterans. With three independent branches in the new government, the lines of authority were not always clear. The actual system for the administration of benefits to the nation's war veterans thus evolved slowly under the constitutional framework during the 1790s.

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<sup>143</sup> See "An Act to amend the act concerning pensioners," enacted October 1785 as ch. 44, in Hening, *Statutes of Virginia*, vol. 12, 102-06; "An Act for the Relief of Officers, Soldiers and Sailors, who have been Disabled in the Service of the United States During the Late War," enacted December 29, 1785 as ch. 14, in Clark, *The State Records of North Carolina*, vol. 24, 735-37; "AN ACT To make provision for Officers, Soldiers and Seamen who have been disabled in the service of the United States," enacted February 13, 1786, in Candler, *Colonial Records of the State of Georgia*, vol. 19, part 2, 518-20; "An Act in addition to an Act entitled An Act for providing and regulating Jurors in Civil Actions," enacted October 1786, in Hoadley, *Public Records of the State of Connecticut*, vol. 6, 234-36; Act of 1787, ch. 147b, *Laws of the State of Delaware*, vol. I, 892. See also, Berthold Fernow, *Documents Relating to the Colonial History of the State of New York* (Albany: Weed, Parsons, 1853-87; reprinted New York: AMS Press, 1969), vol. 15, 551-53; Bouton and Weare, *State Papers of New Hampshire*, vol. 16, 325-27. All six of these laws specifically reference the Resolution adopted by Congress on June 7, 1785. Pennsylvania, Maryland, and Rhode Island were already paying invalid pensions to Revolutionary War veterans under existing state law in 1785, and may not have seen any need for additional legislation. Massachusetts and New Jersey evidently had less formalized systems for keeping track of disabled veterans because both states had submitted lists of their invalid pensioners to Secretary of War Knox by October 1788. See Ford, *Journals of the Continental Congress*, vol. 34, 873. See also, *Acts and Resolves of Massachusetts*, vols. 20 and 21 (showing the adoption of special acts of the legislature providing invalid pensions to individual soldiers). South Carolina, however, never transmitted such a list and did not transfer its invalid pension roll to the federal government until 1804—twenty-five years after the federal government had agreed to assume the payment of invalid pensions for service in the Continental Army. See "An Act for the relief of certain military pensioners in the state of South Carolina," passed March 3, 1804, 8th Congress, 2d Session, ch. 44; *United States Statutes at Large*, vol. 2, 260.

The First United States Congress, which met in three sessions between 1789 and 1791, did not decide on a specific mechanism for handling the delivery of benefits to veterans. During its first session in 1789, Congress determined to assume from the states the obligation of paying invalid pensions accruing for service in the Continental Army. However, this action was taken only after a number of invalid veterans had appealed to Congress for relief. In fact, Pennsylvania's Continental Army veterans were forced to petition *en masse* after the state discontinued payment of their invalid pensions on the grounds that the new Federal Congress would now automatically assume the obligation.<sup>144</sup> Moreover, the resulting Federal legislation was clearly intended as a stop-gap measure until something more permanent could be arranged, since the act in question specified a one-year time limit commencing March 4, 1789.<sup>145</sup> This temporary commitment was renewed annually by the First Congress until it ended in 1791.<sup>146</sup> Thus, it was not until the First Session of the Second Congress that a system to administer the payment of invalid pensions was devised.

On March 23, 1792, Congress finally enacted a bill--the Invalid Pension Act of 1792--that provided for a system of pension administration. Under this act, each disabled veteran seeking a pension from the United States for Revolutionary War service was required to appear in Federal circuit court for the locality in which he resided, with a certificate from his former commanding officer specifying his service and disability in the line of duty (or the affidavits of two credible witnesses to the same effect), as well as affidavits from three "reputable freeholders" from the area in which he resided that set out their knowledge of his "mode of life, employment, labour, or means of support" during the preceding twelve-month period.<sup>147</sup> The circuit court was empowered to examine and certify to the petitioner's disability and to make an appropriate determination of the recommended pension payment. The findings of the court were to be transmitted to the secretary of war for further action.<sup>148</sup> However, the secretary was not strictly obliged to follow the court's recommendations if, in his opinion, he had "cause to suspect imposition or mistake." In that event, he could withhold the name of the petitioner from the pension list; he was also required to report such incidents to Congress.<sup>149</sup>

<sup>144</sup> Charlene Bangs Bickford and Helen E. Veit (eds.), *Documentary History of the First Federal Congress, 1789-1791* (Baltimore: Johns Hopkins University Press, 1986), vol. 1, 202; vol. 3, 181-82, 213, 215, 233; vol. 5, 1135-37.

<sup>145</sup> See "An Act providing for the payment of the Invalid Pensioners of the United States," enacted September 29, 1789, 1st Congress, 1st Session ch. 24; *United States Statutes at Large*, vol. 1, 95. The states were reimbursed under this act for all payments made subsequent to March 4, 1789. See, e.g., Hazard, *Pennsylvania Archives*, First Series, vol. 11, 728-31 (correspondence between Secretary of War Henry Knox and Pennsylvania officials with respect to the assumption of pension payments).

<sup>146</sup> See "An Act further to provide for the Payment of the Invalid Pensioners of the United States," enacted July 16, 1790, 1st Congress, 2d Session ch. 27, and "An Act to continue in force the act therein mentioned, and to make further provision for the payment of Pensions to Invalids, and for the support of lighthouses, beacons, buoys, and public piers," enacted March 3, 1791, 1st Congress, 3d Session ch. 24, §2; *United States Statutes at Large*, vol. 1, 129, 218.

<sup>147</sup> "An Act to provide for the settlement of the Claims of Widows and Orphans barred by the limitations heretofore established, and to regulate the Claims to Invalid Pensions," enacted March 23, 1792, 2d Congress, 1st Session ch. 11, § 2; *United States Statutes at Large*, vol. 1, 243-44.

<sup>148</sup> Act of March 23, 1792, § 2; *United States Statutes at Large*, vol. 1, 244.

<sup>149</sup> Act of March 23, 1792, § 4; *United States Statutes at Large*, vol. 1, 244.

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The role that Congress intended the Federal courts to play in this scheme was not completely thought out. Under the Judiciary Act of 1789, Congress had created a three-tiered Federal court structure.<sup>150</sup> The lowest level of this judicial structure, composed of the Federal districts courts, was the simplest to administer since each state and organized territory constituted its own administrative district. The highest level, the Supreme Court of the United States, was also structurally simple because the justices were limited in number and met at a single location. However, the middle level—the Federal circuit courts—presented an administrative nightmare. Under the Judiciary Act of 1789, circuit courts judges did not hold independent appointments. Instead, each Supreme Court justice was assigned to travel one of the three Federal circuits twice each year (in May and October), and combine with one or more of the district court judges in each state to form the appellate panel for that state during each of the two sessions; accordingly, the circuit court had to meet on different days in each state in order to allow the Supreme Court justices sufficient time for travel.<sup>151</sup> Given the rigors imposed on the justices by their responsibilities to the Federal circuit courts, in addition to the regular Supreme Court sessions in February and August, it is not surprising that they protested the new burden Congress attempted to add to their workload through the Federal Invalid Pension Act of 1792.<sup>152</sup>

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<sup>150</sup> See "An Act to establish the Judicial Courts of the United States," enacted September 24, 1789, 1st Congress, 1st Session ch. 20; *United States Statutes at Large*, vol. 1, 73.

<sup>151</sup> Act of September 24, 1789, § 5; *United States Statutes at Large*, vol. 1, 75. The three circuits created by the Judiciary Act were the Eastern Circuit (consisting of New Hampshire, Massachusetts, Connecticut, and New York), the Middle Circuit (New Jersey, Pennsylvania, Delaware, Maryland, and Virginia), and the Southern Circuit (Georgia and South Carolina). See Act of September 24, 1789, § 4; *United States Statutes at Large*, vol. 1, 74-75. North Carolina and Rhode Island were initially excluded from the provisions of the act because they had not yet ratified the Constitution and therefore were not officially part of the Union. North Carolina was added to the Southern Circuit in June 1790. See "An Act for giving effect to an Act entitled 'An Act to establish the Judicial Courts of the United States,' within the State of North Carolina," enacted June 4, 1790, 1st Congress, 2nd Session ch. 17, § 3; *United States Statutes at Large*, vol. 1, 126. Rhode Island (in June 1790) and Vermont (in March 1791) were added to the Eastern Circuit. See "An Act for giving effect to an Act intituled 'An Act to establish the Judicial Courts of the United States,' within the State of Rhode Island and Providence Plantations," enacted June 23, 1790, 1st Congress, 2nd Session ch. 21, § 3, and "An Act giving effect to the laws of the United States within the State of Vermont," enacted March 2, 1791, 1st Congress, 3rd Session ch. 12, § 3; *United States Statutes at Large*, vol. 1, 128, 197. Maine and Kentucky, which existed in 1789 as organized territories, were not part of any of the federal circuits; instead, their district courts were vested with the power to act as federal circuit courts. See Act of September 24, 1789, § 10; *United States Statutes at Large*, vol. 1, 77. The status of the Kentucky district courts continued unchanged after Kentucky's admission as a state in 1792. See "An Act declaring the consent of Congress, that a new State be formed within the jurisdiction of the Commonwealth of Virginia, and admitted into this Union, by the name of the State of Kentucky," enacted February 4, 1791, 1st Congress, 3rd Session ch. 4; *United States Statutes at Large*. The Tennessee district courts were given the same authority upon the admission of Tennessee to the union in 1796. See "An Act giving effect to the laws of the United States, within the State of Tennessee," enacted January 31, 1797, 4th Congress, 2d Session ch. 2, § 2; *United States Statutes at Large*, vol. 1, 496-97. The circuit court powers of the Maine district courts were not repealed until Maine became a state in 1820. See "An Act establishing a circuit court within and for the district of Maine," enacted March 30, 1820, 16th Congress, 1st Session ch. 27, § 2; *United States Statutes at Large*, vol. 3, 554. The Judiciary Act of 1801, passed during the last months of the Adams administration, attempted to change the circuit court structure by dividing the three existing circuits into six and integrating Maine, Kentucky and Tennessee into the circuit structure. See "An Act to provide for the more convenient organization of the courts of the United States," enacted February 13, 1801, 6th Congress, 2nd Session ch. 4, § 6; *United States Statutes at Large*, vol. 2, 89-90. President Jefferson, however, took strident opposition to the act and it was repealed by the Seventh Congress. The Judiciary Act of 1802 modified the revisions set out in the 1801 act by splitting each of the existing circuits in half (to create six circuits in all) and restoring the district courts of Maine, Kentucky, and Tennessee to their former powers. See "An Act to amend the Judicial System of the United States," enacted April 29, 1802, 7th Congress, 1st Session ch. 31, § 4; *United States Statutes at Large*, vol. 2, 156-58.

<sup>152</sup> In fact, on August 9, 1792 the justices submitted a memorial to Congress through President Washington, petitioning for reform of the federal judiciary on the basis that "the task of holding twenty-seven circuit courts a year, in the different states, from New Hampshire to Georgia, besides two sessions of the Supreme Court at Philadelphia, in the two most severe seasons of the year, is a task which, considering the extent of the United States, and the small number of judges, is too burdensome." See Walter Lowrie and Walter S. Franklin, *American State Papers. Documents, Legislative and Executive, of*

The justices, who were riding their respective circuits when the act became law on March 27, were quick to react to the new role defined for them by Congress. On April 5, the Eastern Circuit adopted as its official opinion,

That neither the legislative nor the Executive branches, can constitutionally assign to the judicial any duties, but such as are properly judicial, and to be performed in a judicial manner.... [T]he duties assigned to the circuit, by this act, are not of that description, and... the act itself does not appear to contemplate them as such; inasmuch as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and suspension of the secretary at war, and then to the revision of the legislature; whereas, by the constitution, neither the secretary at war, nor any other Executive officer, nor even the legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.<sup>153</sup>

The concerns of the Eastern Circuit in this matter were echoed in letters written to President George Washington by the judges of the Middle and Southern circuits. The Middle Circuit justices, in a letter dated April 18, noted:

It is a principle important to freedom, that in government, the *judicial* should be distinct from, and independent of, the legislative department. To this important principle, the people of the United States, in forming their constitution, have manifested the highest regard.<sup>154</sup>

The 1792 pension act violated these proscriptions, in the view of the Middle Circuit justices, both because the business assigned to the circuit courts was not judicial and because any judgments made by the circuit court were subject to revision by the other two branches of the Federal government. Such provisions, they concluded, were "radically inconsistent" with the concept of an independent judiciary, and, accordingly, they declined to engage in any proceedings specified by the act. The Southern Circuit, took a more cautious approach. In a letter to the president dated June 8, 1792, the court expressed its concerns that the 1792 pension act would effectively compel the courts to exercise powers not authorized by the Constitution. However, the court was careful to note that the Southern Circuit had yet to receive any applications under the pension act, and that insofar "as many unfortunate and meritorious individuals, whom congress have justly thought proper objects of immediate relief, may suffer great distress" should the court decline to take up their petitions, the

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*the Congress of the United States, From the First Session of the First to the Second Session of the Tenth, Inclusive: Commencing March 3, 1789, and ending March 3, 1809. Selected and Edited, Under the Authority of Congress* (Washington: Gales and Seaton, 1834, Class X [Miscellaneous], vol. 1, no. 32, 52. Although this memorial does not refer to the Invalid Pension Act of 1792, it is contemporaneous with the protests of the circuit court justices discussed *infra*.

<sup>153</sup> See Lowrie and Franklin, *American State Papers, Miscellaneous*, vol. 1, no. 30, 49-50. See also *Hayburn's Case*, 2 Dallas (2 U. S.) 409, 410 note, 1 L. Ed. 436 (1793). The authors of this opinion were Supreme Court Chief Justice John Jay and Justice William Cushing, along with New York District Judge Duane.

<sup>154</sup> See Lowrie and Franklin, *American State Papers, Miscellaneous*, vol. 1, no. 31, 50-51. See also *Hayburn's Case*, 2 Dallas (2 U. S.) at 411n. The authors of the letter were Supreme Court Justices James Wilson and John Blair, and Pennsylvania District Judge Peters.

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justices of the Southern Circuit would, of course, agree to hear any such petitions it were to receive.<sup>155</sup>

In fact, both the Eastern and Southern circuits agreed to hear applications under the Invalid Pension Act of 1792, although they did so in the capacity of commissioners appointed by Congress rather than as duly-constituted judicial bodies. In these circuits, the act thus took practical effect despite the constitutional objections of the justices. However, the refusal of the Middle Circuit to entertain any proceedings under the pension act presented the Executive branch with an immediate stumbling block, in that the legislative mechanism for providing pension benefits to veterans living in the states encompassed by that circuit could not be made to function. Attorney General William Randolph attempted to resolve the issue by filing suit at the Supreme Court. Randolph, acting *ex officio* on behalf of "a meritorious and unfortunate class of citizens," first made a motion for a general writ of mandamus to force the Middle Circuit to comply with the provisions of the 1792 pension act. But the Supreme Court, doubting his right to represent a class of potential petitioners in an *ex officio* capacity, disallowed the motion. Randolph then made a second motion on behalf of William Hayburn, a veteran from Pennsylvania who sought to be enrolled on the Federal invalid pension list in accordance with the provisions of the 1792 pension act. The Court took this second motion under advisement, but held the case over until the next session. Before further action could be taken, however, the case was made moot by the repeal of the offensive provisions in the pension act early in 1793.<sup>156</sup>

The revised Invalid Pension Act of 1793, which repealed sections of the 1792 pension act, was clearly intended by Congress to address the procedural concerns raised by circuit court justices under the 1792 pension act. Authority to hear claims was now vested in the judges of the Federal district courts, who might delegate their individual authority to a specially-appointed three-person commission. In addition, each applicant was required to undergo physical examination by two separate physicians commissioned by the judge for the purpose of examining such petitioners. Applicants now had to bear the burden of providing certificates, affidavits, and other specified evidence to support their claims. Moreover, under the 1793 pension act, the powers of the secretary of war were limited to comparing the evidence submitted by the judges with the muster rolls held by the Department of War and submitting a statement of his findings to Congress.<sup>157</sup> Congress was now the final arbiter of pension determinations.<sup>158</sup>

Yet it remained unclear whether the prior actions of the Eastern and Southern circuits under the 1792 pension act, sitting in the capacity of commissioners, had constituted legitimate authority.

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<sup>155</sup> See Lowrie and Franklin, *American State Papers, Miscellaneous*, vol. 1, no. 32, 52-53. See also *Hayburn's Case*, 2 Dallas (2 U. S.) at 412-13n. This letter was written by Supreme Court Justice James Iredell, writing with North Carolina District Judge Sitgreaves.

<sup>156</sup> See *Hayburn's Case*, 2 Dallas (2 U. S.) 409, 1 L. Ed. 436 (1793).

<sup>157</sup> See "An Act to Regulate the Claims to Invalid Pensions," enacted February 28, 1793, 1st Congress, 2d Session ch. 17, §§ 1-2; *United States Statutes at Large*, vol. 1, 324-35.

<sup>158</sup> See "An Act to regulate the Claims to Invalid Pensions," enacted February 28, 1793, 2d Congress, 2d Session ch. 17, §§ 1-2; *United States Statutes at Large*, vol. 1, 324-25.

Congress thus ordered that the secretary of war and the attorney general "take such measures as may be necessary to obtain an adjudication of the Supreme Court of the United States, on the validity of any such rights claimed under the [1792 act], by the determination of certain persons styling themselves commissioners."<sup>159</sup> In February 1794, Attorney General William Bradford appeared before the Supreme Court representing the United States in a case seeking recovery of pension payments from a Connecticut veteran who had been examined and approved by the Eastern Circuit justices, sitting in Connecticut, as commissioners. The Court proceeded to render judgment for the United States without a written opinion. However, Bradford later reported to the secretary of war that the Court had held "such adjudications [that is, of the Circuit Court justices in the capacity of commissioners] are not valid."<sup>160</sup>

By empowering the circuit courts to examine petitions and render judgments for the determination of eligibility for invalid pensions, the Second Congress had clearly intended that the courts play an active role in the administration of a veterans' benefit system. In so doing, Congress relied on an earlier relationship between the legislative and judicial functions of government that has developed out of the colonial experience in most of the colonies outside of New England. But the Federal courts had refused to exercise that power, for reasons which had as much to do with politics as with the Constitution. The circuit courts had been so poorly defined by Congress in 1789 that the workload of the justices was overly heavy from the start. In the wake of the judicial refusal to act, Congress had two options: it could retain administrative authority over the pension system itself, or it could delegate that authority to the Executive branch.

#### *Expansion of the Pension Roll and Judicial Actions, 1800-60*

After 1794, primary responsibility for the administration of the pension roll devolved to the Executive branch. While the secretary of war had always been responsible for keeping the pension list, he was now directed to regularly report applications and irregularities to Congress. Moreover, responsibilities soon accrued to other departments within the Executive branch. The secretary of the navy became responsible for the administration of a separate pension fund--consisting of the proceeds from the sale of vessels captured by the Navy--for disabled Navy veterans. Because pensions were actually paid through the Department of the Treasury, the secretary of that department was responsible for keeping accounts of the payments and reporting to Congress on the sums expended. Subsequent Congresses both increased and decreased the responsibilities of the secretary of war with respect to the pension list. Congress also changed the type of pension benefits offered to veterans.

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<sup>159</sup> See Act of February 28, 1793, § 3; *United States Statutes at Large*, vol. 1, 325.

<sup>160</sup> Susan Low Bloch and Maeva Marcus, "John Marshall's Selective Use of History in *Marbury v. Madison*," *Wisconsin Law Review*, vol. 1986, no. 2 (1986), 308-10. In 1851, Chief Justice Roger B. Taney concluded, from his own examination of the Court's proceedings in the *Yale Todd* case, that the Court had found not only that the power actually conferred on the circuit courts by the 1792 pension act was non-judicial (and thus unconstitutional), but also that the 1792 pension act had been intended to confer a judicial function on the courts and therefore could not be construed to authorize the justices to act outside of the authority of the courts by sitting as commissioners. See *United States v. Ferreira*, 13 Howard (54 U. S.), 40, 52-53n, 14 L. Ed. 42 (1851) [citing *United States v. Yale Todd*, an unreported decision].

Invalid pensions, had been long established as an emolument provided to veterans disabled as a result of their service; pensions for dependents of deceased soldiers and pensions based solely on military service were not viewed in the same light. The initial statutory provision for pensions to widows and orphans of those who had died in the line of duty was adopted in response to agitation for service pensions by Continental Army officers.<sup>161</sup> Thus, it is not surprising that such pensions were initially provided only to the dependents of deceased officers of the Continental Army. Pensions were not provided to the dependents of deceased enlisted men until 1816, when the Fourteenth Congress enacted a bill offering pensions to the veterans of the War of 1812. But the dependents of deceased enlisted men from the Revolutionary War did not receive pensions until 1836.

Service pensions, for which there had been no precedent in the colonies, did not come about until 1818. Under pressure from army officers, in 1778 Congress had initially recommended to the states the adoption of a seven-year half-pay pension for commissioned officers of the Continental Army.<sup>162</sup> However, in 1780 Congress was forced to shift to a promise of half-pay pensions for life (in return for service to the end of the war) as military needs grew increasingly desperate.<sup>163</sup> By 1783, many Continental Army officers had been destitute, morale in the army was at an all-time low, and army officers were on the verge of mutiny. General Washington, as commander in chief, pressed Congress to provide for commutation of the half-pay pensions to full pay over a period of five years, in order to avert an immediate crisis.<sup>164</sup> But no further benefits based on service were extended until

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<sup>161</sup> See Resolve of Congress adopted August 24, 1780; Ford, *Journals of the Continental Congress*, vol. 17, 773. Continental Army officers had been agitating for half-pay pensions in return for their military service since 1777, but Congress was reluctant to adopt such a proposal because it did not have the funds to support it. When Congress finally adopted a provision for half-pay in August 1779, it was immediately rescinded. Cynical and disillusioned officers determined that they would make even greater demands of Congress in 1780, including increased allowances for living expenses, inflation pay, and dependent pensions for the families of the slain. In seeking recognition for their sacrifices to the cause of independence, the officers frequently noted that they had become increasingly impoverished while civilians were prospering from wartime profiteering. See Minor Myers, Jr., *Liberty without Anarchy: A History of the Society of the Cincinnati* (Charlottesville: University of Virginia Press, 1983), 2-5.

<sup>162</sup> See Resolve of May 15, 1778; Ford, *Journals of the Continental Congress*, vol. 11, 502-3.

<sup>163</sup> See Resolve of October 21, 1780; Ford, *Journals of the Continental Congress*, vol. 18, 958-59.

<sup>164</sup> Resolve of March 22, 1783; Ford, *Journals of the Continental Congress*, vol. 24, 207-10. Congress was clearly as reluctant to approve commutation as it had been to approve the half-pay pensions. Despite an intensive effort (by army officers and by nationalist leaders Robert Morris and Alexander Hamilton) to lobby members of Congress to act favorably on commutation, several such measures failed early in 1783 because delegates from the New England states opposed them. Myers, *Liberty without Anarchy*, 8-10, 13-15. Delegates from Connecticut and Rhode Island were specifically instructed to vote against commutation. See Bartlett, *Records of the State of Rhode Island*, vol. 9, 610. When the final vote was taken, however, only Rhode Island, New Hampshire, and New Jersey voted against the measure (the Georgia delegation was absent). See Ford, *Journals of the Continental Congress*, vol. 24, 210. Once commutation had been approved by the required nine states, the public protests from the New England states briefly escalated in vigor but calmed down by the end of the year. See Glasson, *Military Pension Legislation*, 20-21; Cress, *Citizens in Arms*, 69-70.

[ Doc. No. 17. ]

A.

JUDGMENTS.

<i>Names of the Officers, their Rank, and Regiment.</i>	<i>Yearly half pay.</i>	<i>Names of representatives by whom judgments ob- tained; dates of letters, &amp;c., and courts granting them.</i>	<i>Names of securities to executors and ad- ministrators, and amount of security given.</i>	<i>Names of Attorneys, Agents, &amp;c.</i>	<i>Amount of judgment.</i>	<i>REMARKS,</i> <i>Embracing the nature of the evidence, and names of the heirs, devisees, or other persons claiming the benefit of the judgment.</i>
ROBERT COWNE, Capt'n Lieutenant State Artillery.	\$ 200, from Feb. 6, 1782, to March 2, 1829.	Wm. Helme, adm'r. Letters granted Sept'r. 9, 1830, by Culpeper county court.	John Scott, secu- rity, in the penalty of \$ 22,000.	Jno. Scott, Attorney.	\$ 9,411 00	The affidavits of Richard Jeffries of Culpeper, William Payne of Fauquier, and Jesse Way of Fredericksburg; proving Cowne's identity, and the time of his death, are filed. It is also ad- mitted that Robert Cowne was reported by the Board of 1782, as a supernumerary officer. There is no evidence which discloses the exis- tence of any heir of the deceased, except a state- ment in one of the affidavits, that he died at the house of his son, in Fredericksburg, on the 2d March, 1829.
JOHN SPENCER, First Lieutenant State Artillery.	\$ 200, from Feb. 6, 1782, to April 4, 1804.	Joshua Acre, adm'r. de bonis non. Letters granted August 26, 1829, by King Wil- liam county court.	James Thompson, security, in the po- nalty of \$ 500.	Thos. Green, Atto- rney.	\$ 4,433 00	The affidavits of John Huckstep and Catherine Lipscomb, stating that Jno. Spencer died in April, 1804, and that the administrator married his daughter, are filed. It does not appear whether the daughter is living, or if dead, has left issue. John Spencer was reported by the Board of 1782, as a supernumerary officer. A copy of Capt. Wm. Spiller's certificate, as to Spencer's ser- vices and rank, is also filed, upon which the Executive allowed him land bounty, but there is no conclusive proof of identity.
GIDEON JOHNSTON, Captain in State Arti- llery.	\$ 300, from Feb. 6, 1781, to Sept'r. 1829.	Tho. O. Jennings, adm'r. Letters granted Feb'y. 26, 1827, by Fauquier county court.	Neither the secu- rity's name, nor the penalty of the bond, stated.	Jno. Scott, Attorney.	\$ 14,575 00	Gideon Johnston was reported as a supernumerary officer, by the Board of 1782. Besides the affi- davits of Dudley Diggles and others, as to his identity and revolutionary services, there is a certificate of the county court of Fauquier filed, dated 28th July, 1829, that Elizabeth T. Thomp- son, Augustine Jennings and William H. Jen- nings, were and are his only heirs at law.
JOHN HUDSON, Captain second State Regiment.	\$ 240, from Feb. 6, 1782, to April 12, 1790.	John Harper, adm'r. de bonis non. Letters granted Dec'r. 26, 1829, by Norfolk county court.	Jno. Q. Richardson, security, in the po- nalty of \$ 4,000.	Thos. Green, Atto- rney.	\$ 1,964 00	Capt. Hudson was reported by the Board of 1782, as a supernumerary officer. The affidavit of James Cherry states, that Capt. Hudson died in 1790 or 1791, and that he was a revolutionary officer, but is silent as to the particular service or regiment. He left three children, but there

Partial list of judicial decisions issued for Virginia veterans of the American Revolution,  
prepared by the Virginia Auditor of Public Accounts, *A Statement of the Judgments Rendered  
at the Last Superior Court of Henrico, for Half Pay Claim by Officer of the Virginia Line,  
During the Revolutionary War*, Richmond, 1831. Courtesy Library of Congress

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the Fifteenth Congress, faced with a budget surplus, determined to act on President James Monroe's suggestion of providing service pensions to veterans of the Revolutionary War "who are reduced to indigence and even to real distress... [and] who have a claim on the gratitude of their country...." After extensive debates on the proper scope of the proposed service pensions, Congress decided to offer service pensions to any person who had served for nine months or more in the Continental Army or Navy during the Revolutionary War and was now "by reason of his reduced circumstances in life... in need of assistance of his country for support."<sup>165</sup>

The Service Pension Act of 1818 had a significant impact on Executive branch duties. Some 17,730 new names were added to the existing invalid pension roll of 2,200 disabled pensioners. Pension costs skyrocketed from \$120,000 in 1816 to nearly \$1.4 million in 1820.<sup>166</sup> Such a rapid expansion in the pension roll aroused public indignation and suspicions of fraud. It was said that wealthy men had claimed themselves to be paupers to collect service pensions and that some pensioners had even deposited the entire amount received into savings accounts.<sup>167</sup> To address the public outcry, the Sixteenth Congress passed a supplementary law requiring every applicant under the 1818 pension act to submit a notarized schedule of his estate and income, and to swear that he had not disposed of any property with the object of obtaining a pension. The secretary of war was authorized to strike from the pension roll any person he found not to be indigent.<sup>168</sup> These remedial provisions had the desired effect of reducing the pension roll, but not by much. In 1823, Secretary of War John C. Calhoun reported to Congress that only 2,328 persons had been struck from the pension rolls outright under the remedial Service Pension Act of 1820, while another 4,221 had been removed because of death or the failure to submit the requisite property schedules. Since 2,039 pensioners had been added to the rolls subsequent to May 1, 1820, the total number of pensioners remained greater than 12,000, and the annual pension expenditures were still in excess of \$1 million.<sup>169</sup>

New laws continued to extend benefits. Full pay for life for certain Revolutionary War veterans was enacted in 1828 and extended further in 1832.<sup>170</sup> Amendments in 1832 and 1833 to the 1832 act

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<sup>165</sup> "An Act to provide for certain persons engaged in the land and naval service of the United States, in the Revolutionary War," enacted March 18, 1818, 15th Congress, 1st Session ch. 19, § 1; *United States Statutes at Large*, vol. 3, 410. For a discussion of the character of Congressional debates on this subject, see William Henry Glasson, *History of Military Pension Legislation in the United States* (Columbia Studies in History, Economics and Public Law, vol. 12, no. 3) (New York: Columbia University Press, 1900), 33-36. Sisson, *History of Veterans' Pensions and Related Benefits*, 11.

<sup>166</sup> Lowrie and Franklin, *American State Papers*, Class IX [Claims], nos. 578 and 619, pp. 824, 885. By 1822 the Department of War's Pension Office had nine clerks; *ibid.*, p. 983.

<sup>167</sup> Glasson, *Military Pension Legislation*, 37. Glasson notes that in Connecticut, the public outrage was sufficient to culminate in a public meeting, held for the purpose of "eras[ing] from the list" any pensioner "who should not receive the public money, [which was] meant to be distributed only to the needy and destitute."

<sup>168</sup> Glasson, *Military Pension Legislation*, 37-38.

<sup>169</sup> Lowrie and Franklin, *American State Papers*. Claims, no. 619, 885. See also Calhoun's report to Congress dated February 1822; *ibid.*, no. 578, 824.

<sup>170</sup> Act of May 15, 1828, *United States Statutes at Large*, vol. 4, 269; and Act of June 7, 1832, *United States Statutes at Large*, vol. 4, 529.

allowed both invalid and service pensions.<sup>171</sup> An act in 1836 provided benefits to veterans of Indian wars in Florida.<sup>172</sup> Moreover, these benefits were being paid out for long periods. As time would show, the last Revolutionary War survivor died in 1867 and the last dependent pensioner did not die until 1906. Similarly, the last War of 1812 survivor died in 1905 and the last dependent of a War of 1812 veterans died in 1946; the last Mexican War (1846-48) dependent died in 1962 and, in 1990, the last survivor of the Spanish-American War (1898) was still alive. In the midst of this enlarged pension activity, Congress authorized the establishment of the first government office--the Bureau of Pensions--specifically to handle veterans' benefits. An appropriations bill in March 1833 provided for a commissioner of pensions, as a part of the Department of War, to administer pension laws. In 1840, naval pension administration was transferred from the Department of the Navy to the Bureau of Pensions. In 1849 the bureau was transferred to the new Department of the Interior where it was to remain until 1930 when its functions--and those of the Veterans' Bureau, an independent agency that was established in 1921 to take care of the needs of World War I veterans--were taken over by the new Veterans' Administration.<sup>173</sup>

Perhaps partially because of the foreseen ramifications of the expanded pension roles, Congress was loath to extend service pensions to veterans of other wars. Congress used the promise of invalid pensions to recruit volunteers for both the War of 1812 and the Mexican War.<sup>174</sup> Federal legislation mandating the payment of pensions to the dependents of those slain closely followed the close of each war.<sup>175</sup> Service pensions, however, were not forthcoming. Distinguished veterans had recourse to private acts of Congress, but little else. Moreover, several cases decided by the Supreme Court put into question the ability of a veteran to compel officials of the Executive branch to comply with an act of Congress passed on his behalf.

The general principle of judicial remedies for veterans was first outlined by Chief Justice John Marshall in the landmark case of *Marbury v. Madison* in 1803.<sup>176</sup> Marshall, noting that the secretary of war had been directed by Congress to place on the pension rolls all persons named by him in a report to Congress in 1794, observed:

If he should refuse to do so, would the wounded veteran be without remedy?  
Is it to be contended, that where the law, in precise terms, directs the performance of an act, in which an individual is interested, the law is incapable of securing obedience to its mandate?... Is it to be contended that the

<sup>171</sup> Act of July 14, 1832, *United States Statutes at Large*, vol. 4, 600; and Act of May 19, 1833, *United States Statutes at Large*, vol. 4, 612.

<sup>172</sup> Act of March 19, 1836, *United States Statutes at Large*, vol. 4, 7.

<sup>173</sup> Gustavus A. Weber and Laurence F. Schmeckebier, *The Veterans' Administration: Its History, Activities and Organization* (Service Monographs of the United States Government, 66.) (Washington: Institute for Government Research, Brookings Institution, 1934), 206-8; and Office of Public Affairs, Department of Veterans Affairs, "Facts About the Department of Veterans Affairs," Washington, July 2, 1990, 1.

<sup>174</sup> See Acts of January 2, January 12, and February 6, 1812 and January 29, 1813; *United States Statutes at Large*, vol. 2, 670-71, 676, 794 and Act of May 13, 1846; *ibid.*, vol. 9, 9.

<sup>175</sup> See Acts of April 16, 1816 and July 21, 1848; *United States Statutes at Large*, vol. 3, 285, and vol. 9, 249.

<sup>176</sup> *Marbury v. Madison*, 1 Cranch (5 U. S.) 137, 2 L. Ed. 60 (1803).

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heads of departments are not amenable to the laws of their country? Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. No act of the legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law.<sup>177</sup>

The courts, in theory, could issue writs of mandamus to government officials. Yet this legal remedy was effectively limited by Marshall's determination in *Marbury* that the Constitution itself did not grant this specific power to the Supreme Court.<sup>178</sup> The Court in 1838 clarified its stance in *Kendall v. United States ex rel Stokes*.<sup>179</sup> The authority of the Supreme Court and the Federal circuit Courts to issue writs of mandamus, as delineated by Section 14 of the Judiciary Act of 1789, was incidental to their powers as appellate bodies. Thus, the Supreme Court said, a writ of mandamus might be issued to compel a final determination in a case, so that the decision might be reviewed on appeal. But such a writ could not be used to direct the nature of the proceedings in the matter (for example, by ordering a particular outcome).<sup>180</sup> The impact of these holdings by the Court on the legal remedies available to veterans and their dependents can be measured by Chief Justice Roger B. Taney's opinion in *Decatur v. Paulding* in 1840.<sup>181</sup>

The case involved the widow of a veteran, who sought to enforce the terms of a private act of Congress passed on her behalf in lieu of the general pension law enacted by Congress on the same date. Already disinclined to the plaintiff on the mandamus issue, Taney further remarked:

The interference of the Courts with the performance of the ordinary duties of the Executive departments of the government, would be productive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given to them.... It is understood from the Secretary's return to the mandamus, that in allowing the half-pay,... the rations or emoluments to which the officer was entitled, have never been brought into the calculation. Suppose the [Circuit] Court had deemed the act required by the resolution in question a fit subject for a mandamus, and, in expounding it, had determined that the

<sup>177</sup> *Marbury v. Madison*, 1 Cranch (5 U. S.) at 163-66.

<sup>178</sup> Marshall's ruling was that Congress could not, under the Constitution, legislate those matters over which the Court would have original jurisdiction, and that the authority vested in the Court under § 13 of the Judiciary Act of 1789 was therefore not valid. Bloch and Marcus have pointed out that, prior to *Marbury v. Madison*, the Supreme Court may have held a different opinion concerning the validity of § 13 of the Judiciary Act. In two unreported cases brought under the Pension Act of 1792, mandamus was sought to compel the secretary of war to add to the pension list the names of disabled veterans examined by the judges of the Circuit Courts sitting in the capacity of commissioners. The first suit, which remains unnamed, was brought before the Court during the August 1793 session by Attorney General William Randolph. He, however, was not acting on behalf of any particular veteran and in the face of the Court's doubts concerning his capacity to proceed without a specific client, he allowed his suit to lapse. (His report of this incident is contained in a letter to Secretary of War Knox, dated August 9, 1793, which is published in Lowrie and Franklin, *American State Papers. Miscellaneous*, vol. 1, no. 47, 78). The second suit, *Ex Parte Chandler*, was filed by private counsel on behalf of a disabled Connecticut veteran and came before the Court during the February 1794 session. In this case, the court decided that it could not issue the requested writ but did not express an opinion in writing. See Bloch and Marcus, "John's Marshall's Selective Use of History," 306-08, which point outs (326-31) that the Court did not question its jurisdiction to hear these cases; Marshall was in fact the first person to suggest that § 13 might be unconstitutional.

<sup>179</sup> 12 Peters (37 U. S.) 524, 9 L. Ed. 1181 (1838).

<sup>180</sup> *Kendall v. United States ex rel Stokes*, 12 Peters (37 U.S.) at 621-22.

<sup>181</sup> 14 Peters (39 U. S.) 497, 10 L. Ed. 559 (1840).

rations and emoluments of the officer were to be considered in calculating the half-pay? We can readily imagine the confusion and disorder into which such a decision would throw the whole subject of pensions and half-pay; which now forms so large a portion of the annual expenditure of the government, and is distributed among such a multitude of individuals.<sup>182</sup>

Citing *Kendall*, Taney went on to rule that the commissioner of pensions--in following the general law rather than the private act--had acted within his discretion as an officer of the government, and the court therefore had no authority to issue the requested writ of mandamus. Taney had thus contributed the definitive word on the mandamus issue. But in his reference to the proportionate size of the military pension functions of the Federal government, Taney left a revealing clue concerning the reluctance of the Court to commit itself to any action that would mean taking on the additional burden of pension cases. If judicial review of pension determinations could presumably throw the Executive branch into such a state of confusion, it would hardly do less to the courts.

In the years before the Civil War (1861-65), Federal legislation continued to expand the veterans benefit system. Widows and dependent children of enlisted men (dependents of officers were already covered) who died in service were given half pay for five years in accordance with an 1836 act.<sup>183</sup> The start of the Mexican War in 1846 brought immediate Congressional action promising invalid pension benefits to regular army and navy personnel and volunteers alike.<sup>184</sup> In 1858 a law continuing the 1836 dependents act, gave life-time half pay to widows and dependent children to age sixteen.<sup>185</sup>

#### *Pension Administration and Judicial Developments, 1861-1914*

The activities of the Federal government changed radically in the wake of the Civil War (1861-65). In addition to centralizing many administrative functions in the Federal government that had previously been provided by the states, the war created tremendous social problems that had to be addressed. Nearly 3 million Union troops had participated in the war. Many had been maimed in battle, and others sustained permanent disabilities caused by illness or imprisonment during the course of the war. In addition, the record number of war dead meant a large pool of dependents. Congress had already authorized pensions for these soldiers and their dependents at the beginning of the war.<sup>186</sup> It was thus clear that this was a problem that the Federal government would have to address.<sup>187</sup>

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<sup>182</sup> *Decatur v. Paulding*, 14 Peters (39 U.S.) at 516.

<sup>183</sup> Act of March 19, 1836, *United States Statutes at Large*, vol. 5, 7.

<sup>184</sup> Act of May 13, 1846, *United States Statutes at Large*, vol. 9, 9; and Act of 1858, *United States Statutes at Large*, vol. 11, 309. See Sisson, *History of Veterans' Pensions and Related Benefits*, 13; and William H. Glasson, *Federal Military Pensions in the United States* (New York: Oxford University Press, 1918), 114-16.

<sup>185</sup> Act of June 3, 1858, *United States Statutes at Large*, vol. 11, 230.

<sup>186</sup> See Act of July 22, 1861, as amended by Act of July 14, 1862; *United States Statutes at Large*, vol. 12, 566, and vol. 13, 270.

<sup>187</sup> The federal government's responsibility was to the Union troops only. Confederate Army veterans had no recourse to federal pension benefits of any kind prior to 1958; however, the former Confederate states, on an individual basis, did provide pension benefits and medical care to indigent Confederate veterans. By 1892, the eleven former Confederate states were providing benefits to 27,055 veterans and dependents. This figure represented only 5 percent of those eligible for such benefits.

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To provide medical and rehabilitative aid to the large number of war disabled, Congress authorized the establishment of the National Asylum for Disabled Volunteer Soldiers (in 1873 it was renamed the National Home for Disabled Volunteer Soldiers).<sup>188</sup> It was administered by a board of managers composed of the president of the United States, the secretary of war, the chief justice of the Supreme Court, and nine citizens who were not members of Congress. Facilities were established in various parts of the United States with headquarters in Hartford, Connecticut (until 1900), New York (1900-15), Kansas City, Missouri (1915-16), and Dayton, Ohio (1916-30). In 1930 its functions were amalgamated with the Veterans' Administration.<sup>189</sup>

The war and the social problems it created had their most significant impact not on the structure of the Federal government but, rather, on its philosophy of governing. Prior to the war, the administration of pensions and other benefits had been primarily left to the Executive branch; Federal courts had been reluctant to hear pension cases and Congress had exercised minimal oversight of pension claims. With the war over, these positions began to shift. Aware of the vast number of voters who had either served in the war or were closely connected to someone who had served, Congress began to play an increasingly active role in the system of pension and other benefits for veterans. Many members of Congress were veterans themselves. In addition, Federal courts began to gain importance as veterans sought to ensure their rights to rank and pay, as well as to pensions. The primary burden of forging policy with respect to veterans moved from the Executive branch to Congress, and a struggle arose between Congress and the judiciary over the proper forum for the appeals of veterans seeking pensions.

This latter conflict began in the judiciary. The United States Court of Claims, established in 1855, had been authorized from its inception to hear "all claims founded upon any law of Congress, or upon any regulation of an Executive department" where the defendant was the United States.<sup>190</sup> Since pension claims were both founded upon laws of Congress and administered under the regulations of the Bureau of Pensions in the Executive branch, it was clear that they were included within the jurisdictional scope of the Court of Claims. It would appear that no such cases were brought before the Court of Claims between 1855 and 1863. In 1864, however, the Court of Claims began hearing pension cases arising from disabilities suffered by veterans during their service in the Union Army or from the various Federal statutes providing pensions to widows. Between 1864 and 1887, the court heard and decided a total of eight cases involving claims against the government for pensions.<sup>191</sup>

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By contrast, nearly 30 percent of eligible Union veterans were receiving federal benefits in 1892. See M. B. Morton, "Federal and Confederate Pensions Contrasted," *The Forum*, vol. 16, September 1893, 68-74. Morton estimated the number of participants in the Confederate Army at 600,000; a figure which, he noted, represented some 400,000 fewer persons than had been enrolled on the federal pension list in 1892.

<sup>188</sup> Act of March 21, 1866, *United States Statutes at Large*, vol. 14, 10; and Act of January 23, 1873, *United States Statutes at Large*, vol. 17, 417.

<sup>189</sup> Weber and Schmeckebier, *The Veterans' Administration*, 209-12.

<sup>190</sup> See "An Act to establish a Court for the investigation of Claims against the United States," enacted February 24, 1855, 33rd Congress, 2d Session ch. 122, §1; *United States Statutes at Large*, vol. 10, 612-14.

<sup>191</sup> See *United States Court of Claims Digest, 1855 to Date. Covering Court of Claims Reports and Appealed Cases Decided in the Supreme Court of the United States* (St. Paul: West Publishing Company, 1950), s.v. "Pensions".

In December 1868, the Court heard what would become one of the most significant of these cases, *Mays v. United States*.<sup>192</sup> In *Mays*, the widow of a Revolutionary War veteran sought an interpretation of a general act of Congress that would entitle her to arrears of her pension back to the date of an earlier act. The court granted her request, noting that she had produced a certificate from the commissioner of pensions, which, it stated, was "*prima facie* evidence of her title to the pension, and of all the facts that make her title."<sup>193</sup> The Executive branch appealed this ruling to the Supreme Court, which reversed the decision of the Court of Claims on the basis that, in granting the pension arrears, the lower court had misinterpreted the statutes involved.<sup>194</sup> The Supreme Court, however, specifically declined to make any ruling on the jurisdiction of the Court of Claims to hear such cases.<sup>195</sup> Eleven years later, the Court of Claims heard a second significant case, *Daily v. United States*, in which the court found that it did not have the jurisdiction to compel the commissioner of pensions to add claimants to the pension list.<sup>196</sup> The difference between the two cases was that the eligibility of the plaintiff in *Mays* had been certified by the commissioner of pensions, while that of the petitioner in *Daily* had not. In *Daily*, the court noted that a claimant could not use the court to establish her right to a pension because pensions were "a mere gratuity proffered by the government, imposing no legal obligation upon the government," until such time as the claimant's entitlement to the pension had been "ascertained in the manner prescribed by law." Thus, a vested right to a pension could arise only when the commissioner had certified the claimant, and not before. This was true, the court concluded, because Congress had specified this exact procedure in enacting pension legislation:

Without laboring through the pension laws to show the fact, nothing can be clearer, or better known to everybody having ordinary knowledge of those laws, than that the whole matter of ascertaining, determining, and certifying who is lawfully entitled to the gratuity authorized to be bestowed on account of military service is confided to certain Executive officers, and nowhere to the judiciary. No right to a pension is fixed until those officers declare it so. If they decide against the right, there is no appeal from that decision, except to Congress.<sup>197</sup>

Comparing the holding in *Mays* with that in *Daily*, it becomes clear that the Court of Claims had marked its appropriate role as limited to the interpretation of the pension laws as a means of last resort for those claimants who had already been added to the pension list. This was a role with

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<sup>192</sup> *Mays v. United States*, 4 Ct. Cl. 218 (1868); reversed on other grounds, *United States v. Alexander*, 12 Wallace (79 U. S.) 177, 20 L. Ed. 381, 7 Ct. Cl. 205 (1870).

<sup>193</sup> *Mays v. United States*, 4 Ct. Cl. at 218-19.

<sup>194</sup> *United States v. Alexander*, 12 Wallace (79 U. S.) 177, 20 L. Ed. 381, 7 Ct. Cl. 205 (1870).

<sup>195</sup> *United States v. Alexander*, 12 Wallace (79 U. S.) at 177.

<sup>196</sup> *Daily v. United States*, 17 Ct. Cl. 144 (1881).

<sup>197</sup> *Daily v. United States*, 17 Ct. Cl. at 148.

which the Supreme Court, as it had stated in 1868, was not inclined to disagree.<sup>198</sup>

The Supreme Court's holding in *Daily* put veterans on notice that their primary avenue for a legal remedy lay in Congress. But the determination by the courts to remand pension claims to the legislative branch of the Federal government caused as many problems for Congress as it solved for the judiciary. By the 1880s, pension claims had mushroomed into one of the most costly, and time-consuming, functions of the Federal government. Passage of the Pension Arrears Act in 1879 had created a flood of claims by veterans. The number of applications filed with the Bureau of Pensions nearly tripled in one year.<sup>199</sup> Members of the Forty-Sixth Congress (1879-81) were quickly importuned to investigate delayed or rejected applications: the House Select Committee on Pensions, Bounty Land, and Back-pay stated in 1880 that it been receiving 5,000 such requests a month, and the Bureau of Pensions reported over 40,000 inquiries had been made by members of Congress on behalf of various applicants during the same year.<sup>200</sup> Congress agreed to hold additional evening sessions on Fridays to consider the flood of private acts introduced into both chambers seeking pensions for those not eligible under existing laws.<sup>201</sup>

To stem this tide of legislative overtime, several attempts were made during the Forty-Sixth Congress to delegate pension claims to the Judicial branch, or to quasi-judicial agencies of the Executive branch. Bills were introduced into the House of Representatives for the examination and adjudication of pension claims (H.R. 2980), for the establishment of a pension commission (H.R. 4681), and to create a special pension court (H.R. 4652, later replaced by H.R. 5394).<sup>202</sup> Two bills introduced in the Senate (S. 496 and S. 2171) were designed to facilitate the examination and

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<sup>198</sup> During the October 1882 session, the Supreme Court decided the case of a pensioner who claimed the right to collect under both a private act of Congress and the general pension law. See *United States ex rel Burnett v. Teller*, 17 Otto (107 U.S.) 64, 27 L. Ed. 352 (1882). Here, the Court gave a legal coloring to pension claims which was remarkably similar to the language used in *Daily*: "No pensioner has a vested legal right to his pension. Pensions are the bounties of the government, which Congress has the right to give, withhold, distribute, or recall, at its discretion." 17 Otto (107 U. S.) at 67-68. However, the Court did not cite *Daily*. Instead, it relied on its prior determination in *Walton v. Cotton* [19 Howard (60 U. S.) 355, 358, 15 L. Ed. 658 (1856)] that Congress had the authority to qualify entitlement to pensions "at their pleasure." But the Court of Claims, in *Daily*, had not relied on the *Walton* decision. The fact that two federal courts, when confronted with pension claims, had independently reached such analogous conclusions points to a growing congruence of the legal theories applied by federal courts to determine pension cases.

<sup>199</sup> The number of applications rose from 57,118 in 1879 to 141,466 in 1880. *Annual Report of the Commissioner of Pensions*, 1889.

<sup>200</sup> Oliver, "Civil War Military Pensions," 72. These figures are remarkable by comparison with pre-1880 figures. Prior to the effective date of the Arrears Act, the House Pension Committee had been receiving 10,000 requests for assistance per year. The Bureau of Pensions noted that in 1876 it had received only 9,000 inquiries.

<sup>201</sup> Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge, Massachusetts: Belknap Press of Harvard University Press, 1977), 311; Oliver, "Civil War Military Pensions," 72.

<sup>202</sup> H.R. 2980 was introduced by Rep. Caswell of Wisconsin on December 15, 1879; H.R. 4681 was introduced by Rep. Warner of Ohio on February 23, 1880. Both apparently died in the House Committee on Invalid Pensions, to which they were referred upon their introduction. See *Congressional Record*, vol. 10 [46th Congress, 2d Session], 112, 1063. H.R. 5394, the successor to H.R. 4652, was more successful than either of the other bills. After having been reported out of the House Select Committee on the Payment of Pensions, Bounty and Back Pay, this bill reached the floor of the House on two separate occasions for extended consideration. See *Congressional Record*, vol. 10, 1062, 2889-99, 3493-3504. However, no final vote was ever taken.

adjudication of pension claims by allowing claimants access to the Federal district courts.<sup>203</sup> None of these bills passed either house of Congress, however; public opposition was probably the cause for the failure of at least one of these bills.<sup>204</sup>

The failure of the Forty-Sixth Congress to act meant that subsequent congresses continued to have exceptional workloads. During the Forty-Ninth Congress (1885-87), special pension acts constituted 40 percent of the legislation introduced in the House and 55 percent of the legislation in the Senate.<sup>205</sup> Over 4,500 of these bills were introduced during the first session of the Forty-Ninth Congress alone.<sup>206</sup> Despite the pressing nature of this business, however, Congress resolutely declined to cede to the judiciary any of its authority to hear these special pension claims. When Senator Henry W. Blair, a member of the Senate Committee on Pensions and a veteran himself, introduced a bill which would have removed 85 percent of these claims to Federal courts, the bill was quietly quashed by the other members of the committee before it could reach the Senate floor for a vote.<sup>207</sup> A similar bill in the House stalled in the House Committee on Invalid Pensions.<sup>208</sup>

Perhaps nothing illustrates the intent of Congress with respect to retaining direct control over pension claims as well as the political machinations involved in the passage of the Tucker Act during

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<sup>203</sup> S. 496, introduced by Senator Withers of Virginia during the second session of the 46th Congress, was reported out of the Senate Pension Committee on March 24, 1880. It was later amended twice, first by Senator Withers and later by Senator Blair of New Hampshire. See *Congressional Record*, vol. 10, 1577, 1861; vol. 11 [46th Congress, 3d Session], 478. Senator Blair subsequently submitted S. 2171 during the third session of the 46th Congress.

<sup>204</sup> Congress received nearly 300 petitions with respect to S. 496, of which nearly four-fifths were opposed to the measure and only slightly more than one-fifth were in favor. See *Congressional Record*, vol. 11.

<sup>205</sup> Keller, *Affairs of State*, 311.

<sup>206</sup> *Congressional Record*, vol. 17 [49th Congress, 1st Session], 7306.

<sup>207</sup> See *Congressional Record*, vol. 18 [49th Congress, 2d Session], 244 (December 17, 1886). Blair's bill (S. 816) had been introduced in the first session of the 49th Congress and would have allowed petitioners whose claims had been disallowed by the Commissioner of Pensions to take their cases to federal district court instead of appealing directly to Congress. The bill was reported favorably by the Committee on Pensions on June 28, 1886. Blair was able to get both the bill and the Committee report read into the *Record* on July 22, but it was never debated on the floor. See *Congressional Record*, vol. 17, 401, 6194, 7306. When Blair attempted to bring the bill to the floor for discussion during the second session, his colleagues objected that the bill had been approved by the Committee during their absence. Blair was allowed to read the Committee report into the record for the second time, but it was sent back to the Committee on Pensions for further consideration and never reemerged. *Congressional Record*, vol. 18, 244. In fact, this was neither the first time nor the last that Blair attempted to introduce such legislation in the Senate. As a freshman Senator during the 46th Congress (1879-81), Blair had introduced a bill (S. 2171) "providing for the temporary increase of facilities for the examination and adjudication of pension claims." Unfortunately, this bill was tabled immediately after its introduction. *Congressional Record*, vol. 11 [46th Congress, 3d Session], 1398. He introduced an identical bill in the 48th Congress (S. 1932), which never made it out of the Committee on Pensions. *Congressional Record*, vol. 15 [48th Congress, 1st Session], 2236. After his valiant attempts to bring the "trial by jury" bill to the floor during the 49th Congress, he introduced legislation identical to that bill during the two succeeding Congresses. However, each bill died in the Senate Committee on Pensions. See *Congressional Record*, vol. 19 [50th Congress, 1st Session], 27 (S. 374); vol. 21 [51st Congress, 1st Session], 111 (S. 604). It is not known how long Blair would have persisted in his efforts to provide judicial review for veterans—he lost his Senate seat during the nomination process in 1891.

<sup>208</sup> H. R. 9569 was introduced by Rep. Gallinger of New Hampshire on June 21, 1886. See *Congressional Record*, vol. 17, 5272. This bill would have given applicants the right to appeal any decision of the Secretary of the Interior to "the Supreme Court of the District of Columbia sitting in equity, who shall hear and determine the cause *de novo*, and do equity in the matter to the end that the rights of the applicant for pension... may... be protected, under a just and liberal construction of said laws and an avoidance of technicalities." [For the text of this bill, see Neill Dumont, *The President's Pension Vetoes. Comprising the Reports of Congress, the Vetoes of President Cleveland, the Bills Vetoed in Pension Cases Pending before the First Session of the Forty-Ninth Congress; to which are Added Comments Giving Citations from Decisions of the Supreme Court and Opinions of the Attorney General of the United States* (Washington, D.C.: 1886), page after preface].

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the Second Session of the Forty-Ninth Congress.<sup>209</sup> As conceived by the House Judiciary Committee, this legislation was designed to "extend the jurisdiction of the Court of Claims beyond the mere contract obligations of the Government to obligations of all kinds," (including claims at law as well as at equity or admiralty) and to preserve the right to sue the United States in all cases "where there is a claim of right in law or equity."<sup>210</sup> In the version of the bill approved by the House on January 13, 1887, the court's existing jurisdiction over pension claims (such as it was) would have been preserved. By the time H.R. 6974 reached the Senate floor, however, it had been replaced by a substitute bill devised in the Senate Committee on Claims.<sup>211</sup> This Senate version, unlike the original, removed pension and tort claims from the jurisdiction of the Court of Claims, as well as making a number of other changes. The House declined to agree to these changes and appointed conferees to work out the differences between the House and Senate bills.<sup>212</sup> Reporting to the House on March 3, the House conferees stated that the Senate conferees had expressed their disinclination to extend to the Court of Claims any jurisdiction to hear tort claims against the United States, and had insisted on excepting pension and tort claims from the provisions of the final bill. These two changes to the original version enacted by the House were thus incorporated into the conference committee's substitute version without further adjustment.<sup>213</sup> The conference version of the bill now seemed to contradict the intentions of its original sponsors in the House. As Representative Eustace Gibson of West Virginia observed,

... if the bill be carefully studied, it will be found that it amounts to nothing. The great desire of the country has been to get a certain class of claims away from Congress and before the Court of Claims. This bill excludes from consideration by the court almost every claim the judicial hearing of which is not already provided for by law. It excludes specially claims for bounties and pensions.<sup>214</sup>

Nevertheless, the conference version of the bill passed in both the House and the Senate, and was signed into law by President Grover Cleveland the same day.<sup>215</sup>

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<sup>209</sup> See "An act to provide for the bringing of suits against the Government of the United States," enacted March 3, 1887, 49th Congress, 2d Session ch. 359; *United States Statutes at Large*, vol. 24, 505. This bill is named for its primary proponent, Rep. John Randolph Tucker of Virginia.

<sup>210</sup> *Congressional Record*, vol. 18, 622-23 (January 13, 1887).

<sup>211</sup> *Congressional Record*, vol. 18, 2175 (February 24, 1887).

<sup>212</sup> *Congressional Record*, vol. 18, 2435 (February 28, 1887).

<sup>213</sup> *Congressional Record*, vol. 18, 2677-78 (March 3, 1887).

<sup>214</sup> *Congressional Record*, vol. 18, 2680 (March 3, 1887).

<sup>215</sup> In fact, the changes effected by the Tucker Act had merely removed the court's jurisdiction to hear pension claims arising under laws enacted by Congress without altering claims under regulations of the executive branch. Thus, between 1887 and 1924 the Court of Claims retained authority to hear and adjudicate pension cases that involved regulations and operations of the Bureau of Pensions. The Court of Claims decided four such cases between 1887 and 1911. See *United States Court of Claims Digest*, s.v. "Pensions". In 1897, the court heard *Ingram v. United States*, a case which mandated an interpretation of the Tucker Act. Here the court was able to delineate its jurisdiction as specified by the 1887 amendments, noting its limitations and restrictions. In the court's opinion, "the first section of the [Tucker Act] was not new or original legislation. It is certainly in *pari materia* with the various statutes embodied in the Revised Statutes..., and largely a codification of existing law. The clause excepting pensions, although new in statutory terms, was not new law, for that had already been declared to be law by the courts.... The statute was intended to be in enlargement and not in restriction of jurisdiction." See *Ingram v. United States*, 32 Ct. Cl. 161 (1897).



The restored Great Hall of the Pension Building, Washington, D.C., completed in 1887 as the headquarters of the Bureau of Pensions.

*Courtesy National Building Museum*

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Given the fact that each Congress since 1880 had been groaning under the inundation of petitions for special pension acts ("the consideration of which," Senator Blair remarked, "...has led to a state of feeling that I need not enlarge upon"), Congressional unwillingness to delegate pension claims to the courts may seem surprising.<sup>216</sup> However, the nearly simultaneous actions of the Forty-Ninth Congress, in rejecting a legislative provision for the specific adjudication of pension claims while restricting the Court of Claims from hearing pension claims arising under acts of Congress, speak to an underlying motivation of these legislators. In point of fact, the special pension acts represented a distinctive arena for personal contact in an era of partisan politics. By undertaking to represent a constituent's claims in Congress, each legislator could hope to earn the votes of that constituent's family, neighbors and friends, not only for himself but also for his party. For the Republican Party, which had led the Union during the war years, authored the post-war Reconstruction, and billed itself as the party committed to social welfare, these contacts were critical. Thus, when a Republican maverick, such as Blair, threatened to remove such opportunities for providing direct service to constituents, it was his Republican colleagues even more than the opposing Democrats who moved to defuse his actions.<sup>217</sup> In fact, during the 1880s the Democratic Party had taken on the role of favoring a reduction in the tariff—the primary mechanism through which the money committed to pension payments was raised. In so doing, the Democrats had necessarily styled themselves as supporters of the nation's expanding business interests and created the impression that they were unsympathetic to veterans.<sup>218</sup> Nevertheless, the Democrats' push for greater efficiency in government processes had led to Democratic sponsorship of pension court legislation in the House during the Forty-sixth Congress.<sup>219</sup>

If Congress was engaged in partisan politics on the grand scale during the 1880s, the Executive branch was not far behind. The new demands on the Bureau of Pensions by veterans of the Union Army and Navy mandated the consolidation of the bureau's operations under one roof, it graduated to its own separate office building in 1887, although it remained part of the Department of the Interior.<sup>220</sup> During the last three decades of the nineteenth century, the Bureau of Pensions was

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<sup>216</sup> For Senator Blair's comments, see *Congressional Record*, vol. 17, 7306 (July 22, 1886).

<sup>217</sup> From the 46th through the 51st Congresses (1879-91), the Republicans held the Senate while the Democrats (except during the 47th Congress) held the House of Representatives. Control was maintained in each case by a narrow margin. During this time, the Senate Pension Committee, which numbered between eight and ten members, maintained a ratio of five or six Republicans to four Democrats. In the House, the pension committees (there were two standing committees and a select committee) were composed of a slightly higher ratio of Democrats to Republicans.

<sup>218</sup> See Donald L. McMurry, "The Political Significance of the Pension Question, 1885-1897," *Mississippi Valley Historical Review*, vol. 9, no. 1 (June 1922), 27-29. The impression that Democrats were unsympathetic to veterans was clearly underscored by President Cleveland's veto of the Dependent Pension Bill of 1887, since Cleveland was a Democrat. Subsequently, Cleveland was labeled "the great vetoer," in newspapers aimed at veterans while the Republicans were painted as the "pledged friends of soldiers." See *National Tribune*, August 8, 1888, cited in Donald L. McMurry, "The Bureau of Pensions during the Administration of President Harrison," *Mississippi Valley Historical Review*, vol. 13, no. 3 (December 1926), 344. The public image of the Democratic Party also suffered among veterans because of the party's post-war strength in the ex-Confederate Southern states. In 1886, for example, the compiler of a volume detailing Cleveland's vetoes of special pension acts asserted that "such use has been made of the veto [by President Cleveland], as to show its danger, when in the hands of one whose sympathies are with, and whose place is due to the votes of those States which erect no monuments dedicated to or inscribed with tributes to the Union, and whose people grow content when the veto is made a menace to the Northern soldier." See Dumont, *The President's Pension Vetoes*, 352.

<sup>219</sup> See *Congressional Record*, vol. 10, 2889-99 (April 11, 1880).

<sup>220</sup> The new Pension Building had been designed by General Montgomery C. Meigs, an architectural engineer and Civil War veteran who had just retired in 1881 as Quartermaster General of the Army. Meigs took his inspiration from Roman and Italian Renaissance architecture. The brick and terra cotta edifice was also designed to help preserve the Bureau's records from the danger of fire by minimizing the use of wood. The entire fourth floor was designed for the storage of documents, and a

second only to the Department of the Post Office in size and scope among all the departments of the Executive branch.<sup>221</sup> Pensions for the nation's war veterans represented the single largest expenditure of the Federal government, consuming 21 percent of the Federal budget in 1880 and escalating to 34 percent by 1890. Each new piece of public pension legislation enacted by Congress caused corresponding growth in the Bureau of Pensions. In 1882, the bureau's workforce had consisted of 741 overworked clerks, servicing a pension roll of 285,697.<sup>222</sup> By 1891, the bureau claimed 6,241 employees. For administrative reasons, the bureau's workforce had grown at nearly twice the rate of the pension roll in the intervening nine years. The Pension Act of 1890, which granted pensions to nearly every veteran and dependent of the Union Army and Navy, had caused both the pension roll and the bureau's clerical force to swell. The commissioner of pensions reported to the secretary of the interior that the pension list, which stood at 489,725 names on June 30, 1889, had grown by an additional 469,000 names as of June 30, 1892. By 1900 the bureau and an extensive extramural support network of claims agents, attorneys, and examining surgeons jointly administered a pension roll encompassing 753,000 veterans and 241,000 dependents.<sup>223</sup>

Such massive growth in the duties and workforce of the bureau created a multitude of opportunities for political patronage, and the bureau was a virtual Republican machine.<sup>224</sup> The Republican Party had emerged from the Civil War firmly in control of the national government and could now repay party stalwarts and former Union soldiers with sinecures to which a substantially weaker Democratic Party was in no position to raise significant protest. Under successive Republican administrations, the appointment of the commissioner of pensions became a patronage slot, and Republican Party politics ruled the bureau between 1879 and 1900.<sup>225</sup> The bureau's special agents were importuned during the elections of 1880 and 1884, for example, to concentrate their efforts in

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metal track running above the doors to the rooms on this floor carried baskets used to transport documents from place to place. In accordance with the overtly political character of the Bureau, the building's Great Hall—measuring 316 feet by 116 feet and sporting a fountain in the center—was designed for public use; seven presidential inaugural balls were held there between 1885 and 1909. By 1926, however, the Pension Bureau had outgrown even this spacious building and had moved on to other quarters. See Linda Brody Lyons, *A Handbook to the Pension Building, Home of the National Building Museum* (Washington: National Building Museum, 1989), 10-18, 55-57.

<sup>221</sup> Keller, *Affairs of State*, 310-311.

<sup>222</sup> Oliver, "Civil War Military Pensions," 82, 91.

<sup>223</sup> Green B. Raum, *Letter from the Commissioner of Pensions to the Secretary of the Interior Showing the Total Number of Cases Allowed by the Bureau of Pensions, and the Total Value of the First Payments in Said Cases, From March 1, 1889, to December 31, 1892, Inclusive, as well as the Condition of the Pending and Completed Files of the Bureau, and the State of the Pension Roll, December 31, 1892* ([Washington:] Department of the Interior, 1893), 3. The Commissioner also noted that 82,657 pensioners had been dropped from the list during the same period, resulting in a total count of 876,068 pensioners on the list at June 30, 1892. Keller, *Affairs of State*, 311-12.

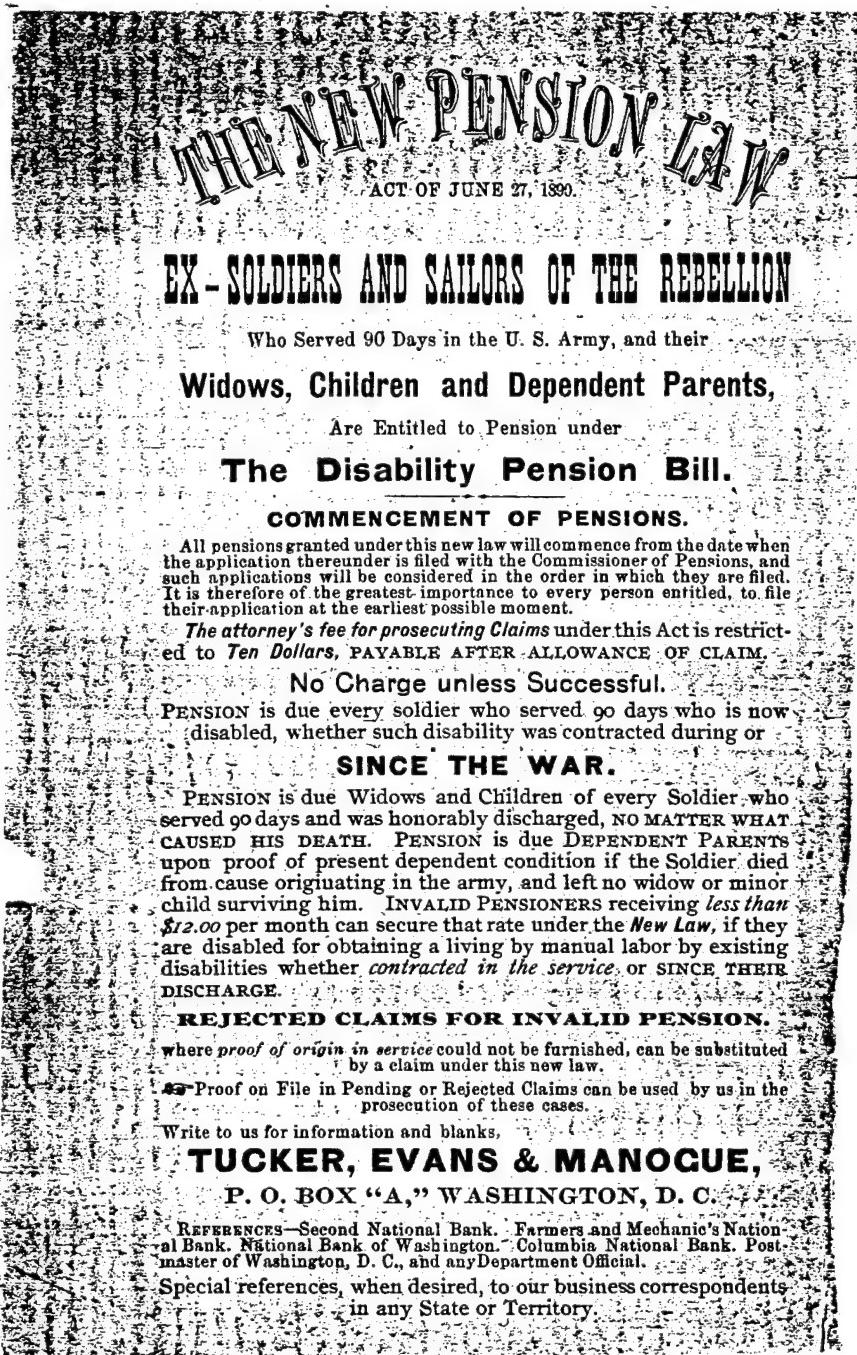
<sup>224</sup> In 1885, John C. Black (President Cleveland's appointee as Commissioner of Pensions, and a Democrat) noted that the bureau had become "all but avowedly a political machine, filled from border to border with the uncompromising adherents of a single organization.... [A] tide of men and money was poured by this office into the sections where political struggle was progressing." Glasson, *Federal Military Pensions*, 198-99, citing *House Executive Documents*, 49th Congress, 1st Session, Document 1, Part 5 ["Report of the Commissioner of Pensions"], pp. 110-11. Black avowed that he would make the bureau nonpartisan and operate it as a business. However, by 1888 he himself was alleged both to have filled the bureau's ranks with members of his own party and to have used pension awards to promote party interests. Glasson, *Federal Military Pensions*, 199, 224.

<sup>225</sup> Except for the two Cleveland administrations (1884-88 and 1892-96), the Republican Party held the White House continuously between 1860 and 1912. See Richard B. Morris, *The Encyclopedia of American History* [Updated and Revised Edition] (New York: Harper & Row, 1965), 426-27.



Political cartoon lampooning Commissioner of Pensions James Tanner, *Puck*, August 28, 1889

Courtesy Library of Congress



Advertisement of "The New Pension Law" published by a Washington, D.C. law firm in *The Soldiers' Claims Book*, Washington, 1890

Courtesy Library of Congress

states in which the Republican hold was tenuous.<sup>226</sup> Pension claimants from Ohio testified before Congress in 1885 that they had been told by the bureau's employees to vote Republican, regardless of their own party affiliation, in order to ensure processing of their pension applications.<sup>227</sup> These and other incidents soon came to light, creating scandal after scandal. Commissioners were turned out of office for corruption, only to be replaced with someone even more corrupt.<sup>228</sup> In 1897, President William McKinley found it wise to circumvent such problems by appointing an able administrator to head the Bureau of Pensions.<sup>229</sup>

### *Legal Remedies for Veterans, 1914-89*

The strongly partisan nature of the wrangling over pension claims did not subside until 1900. By that time, most eligible claimants under the Arrears Act of 1879 and the Pension Act of 1890 had been fully processed. None of the legislation enacted between 1891 and 1917 had the kind of dramatic impact on the functions of the Federal government that was seen during the 1880s, although Congress continued to adopt bills increasing the pension rates and there was considerable public debate over the escalating costs of the pension list prior to World War I (1914-18).<sup>230</sup> As partisanship subsided, the administration of veterans benefits reverted to the Executive branch and resumed its formerly routine character (for a list of key veterans legislation for conflicts after 1914, see Appendix D).

Congress, finally exhausted by the heavy workload attached to special pension acts and the battles over general pension bills, began to delegate greater authority to the agencies of the Executive

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<sup>226</sup> Oliver, "Civil War Military Pensions," 77-78. Investigations into such claims, arising from the elections in 1880 and 1884, were conducted by the House during the 46th and 48th Congresses.

<sup>227</sup> See Testimony of George Starkey, George Forshey and Alla Windsor, all of Ohio, before the House Committee on Payment of Pensions, Bounty and Back Pay, *House of Representatives Report No. 2683*, 48th Congress, 2d Session (Washington: GPO, 1885), part II, 5-12.

<sup>228</sup> Bentley came under fire in 1880 for proceeding too slowly on pension claims in order to allow the secretary of the treasury to present a better financial report during the election campaign. He was replaced by Col. W. W. Dudley, who was investigated by Congress in 1884 for his participation (and that of his subordinates) in Republican campaign activities while still on the government payroll. James Tanner, Benjamin Harrison's appointee as Commissioner, quickly perceived the bureau's vote-grabbing potential and adopted a policy of adding as many claimants as possible to the pension roles, while distributing the pension funds in a lavish manner. Tanner ran into trouble, however, when he began voluntarily re-rating veterans (including members of Congress) and increasing their pensions. For example, Senator Charles Manderson of Nebraska—a Republican—was put on notice that he had been re-rated (without having applied for it) only when he received a certificate for the arrears due at the new pension rate. In searching for an explanation, Manderson was advised by the secretary of the interior that the certificate had been awarded to him improperly; he then surrendered the certificate without having drawn the funds. This matter and others sparked a Congressional investigation into the operations of the bureau, and Tanner was forced out. Tanner was replaced in 1889 by Green B. Raum, who was the subject of a Congressional investigation during the 52nd Congress (1891-93) because of his suspicious relationship with George E. Lemon, a private pension attorney, and because he was engaged in speculative business dealings. All four of these men were Republicans. See Glasson, *Federal Military Pensions*, 178-81, 197-98, 228, 239-40; McMurry, "The Bureau of Pensions," 346-51.

<sup>229</sup> Keller, *Affairs of State*, 312.

<sup>230</sup> See, e.g., Burton J. Hedrick, *Pork-Barrel Pensions: A Scandal in Which Both Political Parties Strive to Excel* (Garden City, New York: Doubleday, 1915); Charles Francis Adams, [Jr.,] *The Civil War Pension Lack-of-System: A Four Thousand-Million Record of Legislative Incompetence Tending to General Political Corruption* (Washington: 1912). Each of these works consisted of a series of articles originally published in the journal *The World's Work* between 1911 and 1912. Both authors decried the enactment of the pension bill of 1912, which increased the pension rate for Civil War veterans to \$1 per day. Both authors also attributed the bipartisan support for such legislation to "competitive electioneering." For a general discussion of the pension legislation enacted between 1890 and 1917 see also Glasson, *Federal Military Pensions*, 242-62.

branch that had been charged with the administration of veterans' benefits. The Bureau of Pensions continued to pay out pensions for military service prior to 1902.

In response to the German threat to American maritime shipping with the onset of World War I, Congress set up the Bureau of War Risk Insurance in the Department of the Treasury in September 1914.<sup>231</sup> Initially, the bureau insured American merchant ships and cargoes and, starting in June 1917, after the United States entered the war, the bureau also provided insurance to masters, officers, and crews on American merchant ships.<sup>232</sup> The bureau's functions, now administered by thirteen divisions, were significantly enlarged the same year when a new act provided for compensatory payments to World War I veterans and dependents of army and navy personnel who died or were disabled during the war, medical and surgical treatment for disabled veterans, and issuance of insurance policies against death or total disability.<sup>233</sup> In February 1917 Congress also had authorized the establishment of the Federal Board for Vocational Rehabilitation to study the problems of vocational education. The Vocational Rehabilitation Act of June 27, 1918 empowered the board to provide education and retraining to disabled World War I veterans. The bureau also took over certain Public Health Service personnel, facilities, and other functions associated with the treatment of qualified war veterans, who also could collect disability insurance from the Bureau of War Risk Insurance.<sup>234</sup> In the meantime, the Bureau of Pensions continued--as it would until 1930--to administer benefits to pre-World War I veterans and operated independently of the two aforementioned agencies.

After the war ended, Congress consolidated all functions pertaining to World War I veterans in a new agency, the Veterans' Bureau. The bureau, established by the Act of August 9, 1921, was an independent agency, which assumed the responsibilities of the Bureau of War Risk Insurance and the Federal Board for Vocational Rehabilitation.<sup>235</sup> By 1924, however, it was obvious that the administrative system that had evolved under these laws was not functioning as Congress had intended. New legislation introduced during the Sixty-Eighth Congress (1924-25) to provide for World War I veterans attempted to reform the system but did so in a way which did not alter the vesting of decision-making authority in the Executive branch. In fact, this legislation included a

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<sup>231</sup> Act of September 12, 1914, *United States Statutes at Large*, vol. 38, 711.

<sup>232</sup> Act of June 12, 1917, *United States Statutes at Large*, vol. 40, 102.

<sup>233</sup> Act of October 6, 1917; See War Risk Insurance Act Amendments of 1917 (Pub. L. 65-90); *United States Statutes at Large*, vol. 40, 398. Also see Weber and Schmeckebier, *The Veterans' Administration*, 212-19. For a chronology of key benefit legislation for veterans of twentieth century conflicts, see Appendix C.

<sup>234</sup> See Vocational Rehabilitation Act (Pub. L. 65-178); *United States Statutes at Large*, vol. 40, 617; and Weber and Schmeckebier, *The Veterans' Administration*, 104, 215.

<sup>235</sup> Act of August 9, 1921, ch. 57 (Pub. L. 67-47); *United States Statutes at Large*, vol. 42, 147. The Veterans' Bureau was intended to absorb the activities of the War Risk Insurance Bureau and the Federal Board for Vocational Rehabilitation. The pension bureau and a third federal agency, the National Home for Disabled Volunteer Soldiers (which administered the system of old soldiers' homes), remained independent. However, in 1930 Congress determined that all existing executive branch agencies responsible for administering benefits to veterans should be merged into a single entity. The result was the Veterans' Administration. See "An Act To authorize the President to consolidate and coordinate governmental activities affecting war veterans," ch. 863 (Pub. L. 71-536), § 1; *United States Statutes at Large*, vol. 46, 1016.

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clause that rendered final all determinations of fact made by the director of the Veterans' Bureau.<sup>236</sup> Clearly, Congress was now trying to distance itself from the administrative process in a way that would have been unthinkable during the 1880s. The administration of veterans benefits was now squarely the responsibility of the Executive branch. Senator David I. Walsh of Massachusetts, a sponsor of the legislation, encapsulated this perspective when he commented,

I think the public ought to distinguish between enacting laws that are beneficial and helpful to disabled soldiers and the managerial work of the bureau. The administration of the bureau is an Executive function, and the Executive department must be held responsible for the mismanagement of the past and that of the future. Congress is responsible for providing the money and for enacting the laws that will help to relieve the difficulties of administration due to red tape and divided responsibility.... The director and the President must now accept full responsibility. Congress has given them the machinery; time will determine if they are capable of operating it.<sup>237</sup>

That this view did not represent just another passing fancy is borne out by the fact that the grant of binding authority to the director was subsequently repeated in legislation enacted by the Seventy-Third Congress in 1933.<sup>238</sup>

The Federal courts were also not about to assume responsibility for veterans benefits. During its session starting in October 1924, the Supreme Court heard a case that determined the direction of judicial decisions regarding veterans benefits for many years. In *Silberschein v. United States*, the Court held that the decisions of the director were "final and conclusive and not subject to judicial review" unless the petitioner could demonstrate that "the decision is wholly unsupported by the evidence, or is wholly dependent upon a question of law or is seen to be clearly arbitrary or capricious."<sup>239</sup> What makes this decision particularly compelling is that the Court was construing, not Section 5 of the new World War Veterans Act, but two earlier statutes that did not explicitly give the director such power.<sup>240</sup> In the Court's view, such authority was implicit in the legislative history of the two acts in question because neither contained "any exception to or limitation upon the

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<sup>236</sup> See World War Veterans Act of 1924, ch. 320, § 5; *United States Statutes at Large*, vol. 43, 607. Originating in Congress as S. 2257, this bill had been introduced by Senator Reed of Pennsylvania on January 29, 1924 and was reported (favorably) out of committee on April 3, 1924. See *Congressional Record*, vol. 65 [68th Congress, 1st Session], 1591, 5458. Although the provisions of the bill were vigorously debated, particularly in the Senate, the language of § 5 (granting the ultimate authority to the Administrator) was never in question. Particularly illuminating in this respect is a portion of the Senate debate in which Senator Oddie of Nevada, a member of the Senate committee investigating corruption in the administration of benefits to World War veterans, raised the issue of the need for reform in the Veterans Bureau because benefits were not reaching those entitled to them. His recommendations would have trimmed the Bureau's bloated bureaucracy without making the Bureau's actions subject to either direct Congressional scrutiny or judicial review. See *Congressional Record*, vol. 65, 7859-64 (May 5, 1924).

<sup>237</sup> *Congressional Record*, vol. 65, 10929-30 (June 6, 1924).

<sup>238</sup> Economy in Government Act of 1933, ch. 3, § 5; *United States Statutes at Large*, vol. 48, 8-9. The relevant portion of this act was later codified in Title 38 of the United States Code as § 211(a).

<sup>239</sup> *Silberschein v. United States*, 266 U. S. 221, 225, 69 L. Ed. 256 (1924).

<sup>240</sup> The case arose under § 2 of the War Risk Insurance Act Amendments of 1917 (Pub. L. 65-90) and § 2 of Public Law 67-47 (which consolidated the War Risk Insurance Bureau and the Federal Bureau for Vocational Rehabilitation into the newly-created Veteran's Bureau). See *United States Statutes at Large*, vol. 40, 398-99; vol. 42, 147-48.

authority of the Director [of the Veterans' Bureau]."<sup>241</sup> The narrow margin in which the courts had previously agreed to entertain jurisdiction over pension cases thus effectively disappeared under the application of these legislative provisions. Court decisions following *Silberschein* cited the director's authority to make final determinations in declining to take jurisdiction.<sup>242</sup> Now veterans were reduced to two avenues of appeal: to successfully assert their right to a judicial remedy, a rejected claimant had to either allege a violation of a constitutional right or make a compelling claim that the director's decision had been arbitrary and capricious rule-making. Even so, these remedies were so narrowly construed by the courts that they were virtually without effect (for a list of court cases establishing veterans benefits up through 1974, see Appendix E).<sup>243</sup>

Remedial legislation and administrative reorganization geographically decentralized veterans relief work as district and subdistrict offices of the Veterans' Bureau were established throughout the United States. By 1925 it was reported to Congress that the bureau's workload had diminished as rehabilitation programs wound down. In a move to further reform the veteran support system, an executive order by President Herbert Hoover, under the authority of an act of Congress of July 3, 1930, consolidated the Veterans' Bureau, the Bureau of Pensions, and the National Home for Disabled Volunteer Soldiers into a single government agency: the Veterans' Administration. It was the first time in the history of the United States that all veterans benefits--except retirement of regular army and navy personnel and the administration of the Soldiers' Home in Washington, D.C. and the Naval Home in Philadelphia--were organized under a single administrative entity. The first administrator of the Veterans' Administration was General Frank T. Hines, who had been director of the Veterans' Bureau since 1923.<sup>244</sup>

As organized, the Veterans' Administration had responsibility for the administration of the army and navy pension system, medical care and hospitalization, domiciliary care, supervision of payments to state-run homes, guardianship for veterans and dependents, adjusted compensation for war

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<sup>241</sup> *Silberschein v. United States*, 266 U. S. at 223. Here the Court relied on the findings of the lower court (the United States District Court for the Eastern District of Michigan) without reviewing the legislative history at length. In fact, the district court had relied primarily on an 1896 ruling of the Supreme Court, holding that "no suit can be maintained against the United States...in any court, without express authority of Congress (emphasis added)." See *Silberschein v. United States*, 280 Fed. 917, 921 (E.D. Mich. 1922), citing *Stanley v. Schwalby*, 162 U. S. 255, 269-70, 40 L. Ed. 960 (1896). The lower court's reasoning was more directly confirmed by the Supreme Court in a case related to *Silberschein* and decided the same day, in which the Court found that, under the statutes in question, "[n]o authority to sue the United States for compensation has been expressly granted[.]" See *Crouch v. United States*, 266 U. S. 180, 181, 69 L. Ed. 233 (1924).

<sup>242</sup> See, e.g., *Sprencel v. United States*, 47 F.2d 501 (5th Cir. 1931); *United States v. Sellers*, 75 F.2d 623 (5th Cir. 1935); *Smith v. United States*, 83 F.2d 631 (8th Cir. 1936); *Morgan v. United States*, 115 F. 2d 426 (5th Cir. 1940).

<sup>243</sup> See Robert L. Rabin, "Preclusion of Judicial Review in the Processing of Claims for Veterans' Benefits: A Preliminary Analysis," *Stanford Law Review*, vol. 27 (February 1975), 905-21; Stephen Van Dolsen, "Judicial Review of Allegedly *Ultra Vires* Actions of the Veterans' Administration: Does 38 U.S.C. § 211(a) Preclude Review?", *Fordham Law Review*, vol. 55 (1987), 579-619. The leading case on this point is *Johnson v. Robinson*, decided by the Supreme Court in 1974. Here the Court determined that constitutional questions concerning a statutory scheme could be distinguished from claims arising from administrative determinations on individual benefit claims, and that an interpretation of § 211(a) that sought to bar the former would itself be unconstitutional. *Johnson v. Robinson*, 415 U.S. 361, 367-68, 39 L. Ed. 2d 389 (1974). This conservative decision, which merely preserved the right of the Court to hear constitutional claims, was widely interpreted as a victory for veterans because it advanced a theory--however narrow--under which veterans might bring contested claims to court. For a discussion of the fine points of the legal issues involved, see Van Dolsen, "Judicial Review of Actions of the Veterans Administration," 599-611.

<sup>244</sup> Weber and Schmeckebier, *The Veterans' Administration*, 220-27.

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veterans, payment of burial expenses, furnishing flags for caskets, insurance payments for yellow fever, and civil service retirement administration for certain Federal employees and employees of the Panama Canal and the Panama Canal Railroad Company. There was an Appeals Division in the Office of the Solicitor of the Veterans' Administration. The division prepared decisions on all matters appealed to the administrator.<sup>245</sup>

The Veterans' Administration came at the onset of the Great Depression and there was considerable legislation providing relief to veterans. The largesse of Congress, however, was subject to presidential vetoes and Executive branch cost cutting. President Franklin D. Roosevelt also sought budget cuts in veterans expenditures. As with other Depression-era legislation, broad powers were given to the Executive branch as Roosevelt decided "to draw the lines of differentiation necessary to justice" when administering veterans benefits. Allowances were reduced and laws granting certain benefits to Spanish-American War and later war veterans were repealed in what has been characterized as an unprecedented and "drastic reversal" of policy affecting not only future veterans benefits but previous ones as well.<sup>246</sup>

Key to the legal review of veterans benefits and to ameliorate charges of unfairness resulting from the broad powers given to the Veterans' Administration, President Roosevelt issued a series of executive orders on July 28, 1933 that provided detailed regulations and established the Special Boards of Review and the Board of Veterans' Appeals. The Special Boards of Review, composed of citizens not employed by the Veterans' Administration, had the purpose of insuring "to all veterans whose disabilities had heretofore been presumptively connected with service a special review of their claims to the end that if... there might be some connection between their condition and their military service that their pensions should be continued." Some 51,000 cases were reviewed in the first six months by 128 boards. Only 43 percent of the veterans whose cases were reviewed were allowed to keep receiving their pensions.<sup>247</sup>

Appeals to rulings made by a special review board could be made to the Board of Veterans' Appeals by the veteran, any member of the board, or an official designated by the Veterans' Administration. The Board of Veterans Appeals, a quasi-judicial, independent tribunal, had statutory jurisdiction to decide appeals made to the administrator for benefits under all laws administered by the Veterans' Administration. Until the United States Court of Veterans Appeals was established in November 1988, the board's decisions were final, except for issues concerning insurance contracts, which were subject to action in Federal district courts. As established, the board had a chairman, a vice chairman, and fifteen associate members, all of whom were appointed by the administrator of veterans' affairs with the approval of the president; the number was increased to thirty associate members in 1934. The board could be divided into three sections to facilitate hearing a greater

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<sup>245</sup> Weber and Schmeckebier, *The Veterans' Administration*, 271-305, 317.

<sup>246</sup> Weber and Schmeckebier, *The Veterans' Administration*, 250-52.

<sup>247</sup> Letter of Frank T. Hines to appointees to Special Boards of Review as quoted in Weber and Schmeckebier, *The Veterans' Administration*, 266 and table 36, 475.

number of cases.<sup>248</sup>

After World War II (1941-45), veterans stepped up the pressure for judicial review of determinations made by the administrator of veterans affairs. After Congress authorized a new Court of Military Appeals, under the new Uniform Code of Military Justice, in 1950, some veterans groups pressed for the creation of a similar court for veterans. Hearings were held, and legislation entertained, in 1952 and 1960, but without result.<sup>249</sup> The veterans groups could not agree on their strategy, or even a philosophy under which veterans might assert their right to judicial review.<sup>250</sup> While some members of Congress supported the concept of judicial review for veterans, they could not muster the votes to enact legislation.

Despite the preclusionary affect of the law establishing the Veterans' Administration, various

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<sup>248</sup> Weber and Schmeckebier, *The Veterans' Administration*, 267-68, 384-85, 422-24, and 437-38.

<sup>249</sup> Four bills were introduced in the House during the Eighty-Second Congress that would have provided for limited judicial review of veterans' claims. All were referred to the House Committee on Veterans' Affairs, which held hearings, but none reached the floor of the House for debate. See *Congressional Record*, vol. 97 [82d Congress, 1st Session], 29, 32, 1036; vol. 98 [82d Congress, 2d Session], 1363. See also House Committee on Veterans' Affairs, *Eighty-Second Congress, Judicial Review of Compensation and Pension Claims: Hearing Before a Subcommittee of the Committee on Veterans' Affairs, House of Representatives, Eighty-Second Congress, Second Session, on H.R. 360, H.R. 478, H.R. 2442 and H.R. 6777, Bills Seeking to Provide Judicial Review of Compensation and Pension Claims under Laws Administered by the Veterans' Administration, May 6, 1952* (Washington: GPO, 1952). Similar legislation was introduced in the Eighty-Third, Eighty-Fourth and Eighty-Fifth Congresses without effect. During the Eighty-Sixth Congress, Congressional advocates of judicial review determined on a different strategy. On June 15, 1960, six identical bills were introduced in the House to "establish a Court of Veterans' Appeals and to prescribe its jurisdiction and functions." These were: H.R. 12653, introduced by Rep. Olin E. Teague of Texas; H.R. 12657, introduced by Rep. Samuel Devine of Ohio; H.R. 12665, introduced by Rep. James M. Quigley of Pennsylvania; H.R. 12666, introduced by Rep. John P. Saylor of Pennsylvania; H.R. 12669, introduced by Rep. Gerald T. Flynn of Wisconsin; and H.R. 12675, introduced by Rep. Erwin Mitchell of Georgia. All six bills were referred to the House Committee on Veterans' Affairs. See *Congressional Record*, vol. 106 [86th Congress, 2d Session], 12749. Rep. Teague's bill, H.R. 12653, was the only one of the six reported out of committee; however, at the insistence of Rep. Gerald Ford of Michigan H.R. 12653 was passed over twice on the calendar and never debated on the floor. See *Congressional Record*, vol. 106, 15039, 17269, 18384. Despite this failure, advocates of the Court of Veterans Appeals tried again during the Eighty-Seventh Congress, this time introducing five separate bills (H.R. 775, H.R. 849, H.R. 3263, H.R. 4134, H.R. 5992) on different dates. Unfortunately, these bills were all stalled in the House Committee on Veterans' Affairs. See *Congressional Record*, vol. 107 [87th Congress, 1st Session], 51, 53, 1245, 2034, 5082. Efforts were made during the first and second sessions of the Eighty-Eighth Congress (1963-64) and the Eighty-Ninth Congress (1965-66) to secure judicial review legislation in both houses of Congress, but this mode of attack also failed. See, generally, *Congressional Record*, vols. 109-112. Although unsuccessful, these efforts indicate that the impetus for a Court of Veterans' Appeals, independent of the operations of the Veterans' Administration, existed well before significant involvement of U.S. forces in the Vietnam conflict.

<sup>250</sup> See, e.g., *Hearing on Judicial Review of Compensation and Pension Claims*, 1989-2007. During the hearings held in 1952, testimony was delivered by representatives of four separate veterans groups. The Disabled American Veterans gave the proposed legislation "unequivocal" support; AMVETS and the Reserve Officers Association also favored it. However, the Veterans of Foreign Wars testified that it had taken no position. While the VFW expressed the view that veterans' benefits should not be seen as "mere gratuities," it clearly did not want to jeopardize its non-adversarial relationship with the Veterans' Administration. By contrast, in hearings held in 1988 on S. 11 (the bill which was eventually enacted as Public Law no. 100-687) all veterans groups testified in favor of judicial review at some level—although there was substantial disagreement over how far to extend it. Several groups representing Vietnam era veterans testified in support of establishing judicial review of veterans' claims through the federal courts, while the four largest veterans' organizations (The American Legion, the DAV, the VFW and AMVETS) all favored restricting judicial review to questions of law. See statements of the National Vietnam Veterans' Coalition, Veterans' Due Process, Veterans of Foreign Wars of the United States, Vietnam Veterans of America, Paralyzed Veterans of America, National Legislative Commission of The American Legion, and American Veterans Committee before the Senate Committee on Veterans' Affairs, in *Hearing Before the Committee on Veterans' Affairs, United States Senate, One Hundredth Congress, Second Session, on S. 11, The Proposed Veterans' Administration Adjudication Procedure and Judicial Review Act, and S. 2292, Veterans' Judicial Review Act, April 28, 1988, S. Hearing 100-938, 100th Congress, 2d Session* (Washington: GPO, 1989), pp. 177-264, 271-317, 383-88, 391-430; Statement of AMVETS, in *Hearing Before the Committee on Veterans' Affairs, House of Representatives, One Hundredth Congress, Second Session, September 8, 1988, Serial no. 100-60, 100th Congress, 2d Session* (Washington: GPO, 1988), 517-24.

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courts discovered that the statute could be circumvented in cases heard between 1950s and 1970s. In 1934 the Supreme Court, in *Lynch v. United States*, discussed the constitutionality of the non-review clause of the Veterans' Administration statute where pensions--defined as "gratuities"--were said to be beyond constitutional protection and thus beyond judicial oversight, reasoning followed by lower courts in upholding the non-review clause. Nevertheless, by concentrating on the specific wording of the original statute, such as with questions concerning "a claim for benefits," it was determined that these words referred only to "initial applications for benefits and not to cases where the administrator had taken action after an original grant of benefits." In the 1974 *Johnson v. Robison* case, the Supreme Court determined the right to judicial review where a claimant challenged the constitutionality of the statute providing for veterans benefits. *Johnson v. Robison* then led to other constitutional cases, such as the 1974 *Taylor v. United States*, in which the Court determined that the Veterans' Administration denial of admission of a veteran accused of a crime to a VA hospital violated the Fifth Amendment of the Constitution, and the 1980 *Evergreen State College v. Cleland*, in which the Court held that the Veterans' Administration's statute did not preclude judicial review of constitutional challenges to benefits regulations. These and other cases, despite continued efforts by the Veterans' Administration to protect preclusionary status of its enabling legislation, tended to affirm the rights of claimants to appeal.<sup>251</sup>

Pressure for judicial review of veterans' claims became stronger during the 1970s, as returning Vietnam veterans discovered that the existing system of Veterans' Administration procedures would not address their needs and concerns. While many Vietnam era veterans had joined the mainstream veterans' organizations, these groups were not likely to raise opposition to the Veteran's Administration's non-adversarial claim system by pressing the complex claims of Vietnam veterans.<sup>252</sup> More and more Vietnam veterans began to break away from the traditional veterans organizations to form their own groups. These groups then began to lobby Congress to address the concerns of the Vietnam era veterans. Beginning with the Ninety-Fourth Congress (1975-76), legislation was entertained in the Senate during each Congress to extend judicial review of veterans' claims to the Federal courts. Such measures were approved in the Senate four times between 1979 and 1985, but

<sup>25</sup> Kenneth B. Kramer, "Judicial Review of the Theoretically Non-Reviewable: An Overview of Pre-COVA Court Action on Claims for Veteran Benefits," *Ohio Northern University Law Review*, 17, No. 1, 1990, 100-20. See also, Norma J. Beedle, "Administrative Law—Veterans' Benefits—Judicial Review of Administrative Procedural Policies in Light of the No-Review Clause," *Missouri Law Review*, 42, 1977, 428-34; Charles V. Dale, *Statutory Preclusion of Veterans' Claims from Judicial Review Under 38 U.S.C. 211(a)* (CRS Report 88-373 A.) (Washington: Congressional Research Service, Library of Congress, May 11, 1988), 13 pp.; John K. Haggerty, "The Ten Dollar Attorney Fee Limitation and Preclusion of Judicial Review in the Veterans Administration," *Hastings Constitutional Law Quarterly*, 14, No. 111, Fall 1986, 141-72; Christopher D. Knopf, "One Last Battle: Reform of the Veterans' Administration Claims Procedure," *Virginia Law Review*, 74, 1988, 937-67; Robert L. Rabin, "Preclusion of Judicial Review in the Processing of Claims for Veterans' Benefits: A Preliminary Analysis," *Stanford Law Review*, 27, February 1975, 905-21; Barton F. Stichman, "The Veterans' Judicial Review Act of 1988: Congress Introduces Courts and Attorneys to the Veterans' Benefits Proceedings," *Administrative Law Review*, 41, No. 3, Summer 1989, 365-98; Stephen Van Dolsen, "Judicial Review of Allegedly Ultra Vires Actions of the Veterans' Administration: Does 38 U.S.C. § 211(a) Preclude Review?" *Fordham Law Review*, 55, 1987, 579-619; and United States Congress, 100th, 1st Session, House of Representatives, Committee on Veterans' Affairs, *Legislative History of the Ten Dollar Attorney Fee Limitation in Claims for Veterans' Benefits* (House Committee Print No. 8.) (Washington: GPO, 1987), 16 pp.

<sup>252</sup> On this point, see *Congressional Quarterly Weekly Report*, vol. 38, no. 24 (June 14, 1980), 1627-34, reprinted in *Hearing on Judicial Review Legislation*, S. Hrg. 100-938, 460-67.

later died in the House.<sup>253</sup>

During the 100th Congress (1987-88), two major and complementary legislative initiatives took place that had significant effects on veterans affairs. First, in recognition of the scope of veterans benefits in American society--the Veterans' Administration budget had reached \$30 billion by 1988--legislation was passed to elevate the Veterans' Administration from an independent agency to a cabinet-level department. In the same way veterans had lobbied for great judicial protection, representatives of the mainline veterans organizations testified on the impact of the Veterans' Administration's programs on the lives of American veterans as they sought department-level status for the agency.<sup>254</sup> By the time the Veterans' Administration became a cabinet-level department--the Department of Veterans Affairs--on March 15, 1989--it had diverse programs ranging from compensation payments for disabilities or death related to military service; pensions; education and training; home loan guaranty; a system of 113 national cemeteries and provision of grave markers in private and national cemeteries; and a medical care program incorporating nursing homes, clinics, and more than 170 medical centers. As reorganized, the new department comprised three organizations: the Veterans Health Services and Research Administration, the Veterans Benefit Administration, and the National Cemetery system.<sup>255</sup> The Board of Veterans Appeals remained in force as an integral part of the new department. The first secretary of veterans affairs, Edward J. Derwinski, headed the second largest cabinet department.<sup>256</sup>

The second legislative initiative also occurred during the 100th Congress. Despite earlier setbacks in Congress, the intensive lobbying effort finally paid off with the enactment of the Veterans Judicial Review Act on November 18, 1988.<sup>257</sup> The act gave veterans the means to appeal decisions made by the Board of Veterans Appeals by authorizing the establishment of an independent judicial-branch body, the United States Court of Veterans Appeals. As the veterans benefits system had grown and the administrative apparatus had become more powerful, courts had become increasingly involved in protecting the rights and privacy of citizens and economic interests affected by this growth.<sup>258</sup> The Congress, by establishing the new court, was determined to rectify what had been labeled the "splendid isolation... from judicial review" of the Veterans' Administration.<sup>259</sup>

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<sup>253</sup> The four were: S. 330 (96th Congress, 1st Session), passed September 17, 1979; S. 349 (97th Congress, 2d Session), passed September 14, 1982; S. 636 (98th Congress, 1st Session), passed June 15, 1983; and S. 367 (99th Congress, 1st Session), passed July 30, 1985. The first three bills died in the House without any action having been taken. During the Ninety-Ninth Congress, companion legislation to the Senate bill was introduced in the House as H.R. 585, but died in the House Committee on Veterans Affairs. See Statement of Senator Alan Cranston in *Hearing on Judicial Review Legislation*, S. Hrg. 100-938, 111.

<sup>254</sup> See "Legislative History," *United States Code Congressional and Administrative News--100th Congress--Second Session*, 1988 (St. Paul, Minnesota: West Publishing Co. 1989), 5, 3408.

<sup>255</sup> Pub. L. 100-527, *United States Statutes at Large*, 102, 2635-48.

<sup>256</sup> Office of the Federal Register, National Archives and Records Administration, *The United States Government Manual*, 1990/91, Washington, 1990, 507; and "Facts About the Department of Veterans Affairs," 2-5.

<sup>257</sup> Pub. L. 100-687, *United States Statutes at Large*, vol. 102, 4105-22.

<sup>258</sup> See "Legislative History," *United States Code Congressional and Administrative News--100th Congress--Second Session*, 1988, 7, 5790-91.

<sup>259</sup> Rabin, "Preclusion of Judicial Review in the Processing of Veterans' Benefits," 905.

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The new court was given "exclusive jurisdiction to review, affirm, modify, or reverse a decision" of the Board of Veterans Appeals and the power to issue writs of mandamus, prohibition, and extraordinary writs in accordance with the All Writs Act and its interim rules. It could not, however, review the schedule of ratings for disabilities or actions of the secretary of veterans affairs in adopting or revising that schedule. Decisions of the court could be appealed to the United States Court of Appeals. The court, consisting of presidential appointees to fifteen-year terms, was authorized a chief judge and six associate judges.<sup>260</sup> It began operations on October 16, 1989.

Thus, after nearly 200 years, a United States Federal court again had a clear charter in adjudicating veterans benefits. As the benefits system for United States veterans became complex so too did the need for resolving disputes between claimants and administrators of those benefits. It seems a logical and equitable evolution in the development of the American system.

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<sup>260</sup> Kramer, "Judicial Review of the Theoretically Non-Reviewable," 99 and 120; and *United States Government Manual*, 1990/91, 77.

## **APPENDICES**

### *Appendix*

- A      Foreign Military Pension Systems, 1899**
- B      Colonial Wars in North American, 1622-1763**
- C      Key Pension Legislation for Wars Prior to 1914**
- D      Key Veterans Legislation for Conflicts After 1914**
- E      Court Cases Establishing Veterans Benefits, 1793-1974**

**Appendix A. Foreign Military Pension Systems, 1899**

<u>Country</u>	<u>Persons entitled (Amount appropriated in most recent year)</u>
Argentina	Officers; men disabled in battle or campaign operations; widows and dependent children (US\$1.3 million)
Austria-Hungary	Officers; widows and children of officers; disabled NCOs and enlisted men (14.2 million gulden)
Belgium	Officers; widows and orphans of officers; disabled NCOs and enlisted men and their widows and children (US\$941,000)
Brazil	Officers and their widows and children (US\$610,000)
Britain	Officers killed or wounded in line of duty; officers' widows or other relatives "only... as a reward for good faithful, and gallant service rendered, and... not... claimed as a right"; retired and disabled soldiers; retired military nurses (£3.6 million)
Chile	Officers; widows, children, and widowed mothers of officers; NCOs and enlisted disabled during campaign (US\$679,000)
Costa Rica	Annual pensions (US\$25,000)
Denmark	Officers; widows and minor children or officers; NCOs and enlisted men discharged for reasons of age, infirmity, or service no longer needed; widows and minor children of pensioned NCOs and enlisted men (US\$440,000)
Ecuador	Annual pensions for officers; soldiers; and their widows and children (US\$85,000)
El Salvador	Invalids wounded in war; widows, mothers, and orphans of soldiers killed in action or who died from wounds (US\$60,000)
France	Retired officers, NCOs, and enlisted; seriously wounded and disabled officers and soldiers; in "less serious cases" only officers and NCOs; widows and orphans of officers and soldiers died in action or on duty or as the results of wounds received; widows of retired officers and soldiers (131 million francs)
Germany	Officers, NCOs, and soldiers for length of service and disability; widows and children of officers, NCOs, and soldiers killed in war or who died from wounds (US\$22 million)
Greece	Retired and disabled officers and soldiers; widows and children of officers and soldiers who died in line of duty or from wounds (annual appropriation not available)
Haiti	Disabled officers and soldiers who served in specific conflicts (money or land pensions) (US\$13,000)
Italy	Retired and disable officers and soldiers; widows and minor children if mother also is deceased) of deceased retirees or those killed in battle (annual appropriation not available)
Japan	Retired officers and NCOs, certain soldiers; widows of retired or disabled enlisted men or those killed in action; relief also provided to family heir under certain conditions (US\$725,000)

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**Appendix A, continued**

Nicaragua	Annual pensions (US\$40,000)
Norway	Retired and disable officers, NCOs, and enlisted men (total annual appropriation not available)
Peru	Retired and disabled officers and soldiers; widows, orphans, widowed mothers, and unmarried dependent sisters of officers and soldiers who died in line of duty (£63,000)
Portugal	Disabled officers, NCOs, and enlisted men; widows of officers, NCOs, and enlisted who died in line of duty (US\$842,000)
Romania	Retired and disabled officers; widows and minor children of deceased officers (annual appropriation not available)
Russia	Retired, disabled and those killed in line duty who were contributors to a pension fund; widows and legitimate children of same
Serbia	Officers, NCOs, and soldiers disabled in line of duty; their widows and minor children (annual appropriation not available)
Sweden	Officers and NCOs; widows of officers and NCOs (21 million kroner)
Switzerland	Disabled officers, NCOs, and soldiers; widows and other survivors of same (77,000 francs)

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Source: Based on information from James L. Davenport (comp.), *The Foreign Pension Systems: A Brief Synopsis of the Pension Laws (Not Civil) of Foreign Nations*. (United States Senate Document No. 56.), Washington, 1902, 5-100.

***Appendix B. Colonial Wars in North America, 1622-1763***

<u>Conflict<sup>1</sup></u>	<u>Combat Theater</u>	<u>Dates</u>
Powhatan Confederacy, First War	Virginia	1622-29
Powhatan Confederacy, Second War	Virginia	1644-46
Pequot War	Connecticut	1636-38
King Philip's War Rhode Island	Massachusetts,	1675-78
Bacon's Rebellion	Virginia	1676
King William's War <i>(War of the Grand Alliance)</i>	New York, Canada, New Hampshire, [Maine], <sup>2</sup> Massachusetts	1689-97
Queen Anne's War <i>(War of the Spanish Succession)</i>	South Carolina, North Carolina, New York, Florida, [Maine], <sup>2</sup> Canada, Massachusetts	1702-13
Rale's War	New Hampshire, [Maine] <sup>2</sup>	1720-26
King George's War <i>(War of Jenkins' Ear, or War of the Austrian Succession)</i>	Florida, Georgia, Canada New York, [Maine], <sup>2</sup> Massachusetts Massachusetts	1739-48 1739-48
The French and Indian War <i>(The Seven Years War)</i>	New York, Canada, Pennsylvania	1754-63

<sup>1</sup> The conflicts listed in this appendix are given under the names by which they were known in the North American colonies. The names in parentheses were used by Europeans to refer to the same conflict.

<sup>2</sup> Throughout the colonial era, the territory of the present state of Maine was administered by Massachusetts as a part of the latter colony.

Source: Based on information from Nathaniel C. Hale, *The American Colonial Wars: A Concise History, 1607-1775* (Wynnewood, Pennsylvania: Hale House, 1971), 6-13, 24-33, 35-36, 38-90.

***Appendix C. Key Pension Legislation for Wars Prior to 1914***

<u>Legislative Enactment</u>	<u>Citation</u>	<u>Benefit</u>
<b>Revolutionary War (April 15, 1775-April 11, 1783)<sup>1</sup></b>		
Resolve of August 26, 1776	5 JCC 702	Invalid pensions
Resolve of August 24, 1780	17 JCC 773	Pensions for dependents of officers
Resolve of June 7, 1785	28 JCC 435	Recommended that the states adopt legislation providing for invalid pensions
Act of September 29, 1789	1 Stat. 95 (ch. 24)	Assumption of Federal invalid pension payments from the states
Act of March 23, 1792	1 Stat. 243 (ch. 11)	Established a Federal system system for invalid pensions
Act of February 28, 1793	1 Stat. 324 (ch. 17)	Revised the Federal system for invalid pensions
Act of April 25, 1808	2 Stat. 491 (ch. 58)	Federal government assumes state invalid pension payments
Act of March 18, 1818	3 Stat. 410 (ch. 19)	Service pensions for indigent veterans
Act of May 1, 1820	3 Stat. 569 (ch. 53)	Service pension reform
Act of May 15, 1828	4 Stat. 269 (ch. 53)	Service pensions
Act of June 7, 1832	4 Stat. 529 (ch. 126)	Service pensions
Act of July 4, 1836	5 Stat. 127 (ch. 362)	Dependent pensions
Act of February 3, 1853	10 Stat. 154 (ch. 41)	Dependent pensions
Act of February 28, 1855	10 Stat. 615 (ch. 126)	Dependent pensions

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*Appendix C, continued.*

<u>Legislative Enactment</u>	<u>Citation</u>	<u>Benefit</u>
<b>War of 1812 (June 18, 1812-January 8, 1815)<sup>2</sup></b>		
Act of January 2, 1812	2 Stat. 670 (ch. 11)	Invalid pensions
Act of January 11, 1812	2 Stat. 671 (ch. 14)	Invalid and dependent pensions
Act of February 6, 1812	2 Stat. 676 (ch. 21)	Invalid and dependent pensions
Act of January 29, 1813	2 Stat. 794 (ch. 16)	Invalid and dependent pensions
Act of April 16, 1816	3 Stat. 285 (ch. 55)	Dependent pensions
Act of February 14, 1871	16 Stat. 411 (ch. 50)	Service and dependent pensions
Act of March 9, 1878	20 Stat. 27 (ch. 28)	Service and dependent pensions
<b>Mexican War (May 13, 1846-February 2, 1848)<sup>3</sup></b>		
Act of May 13, 1846	9 Stat. 9 (ch. 16)	Invalid pensions
Act of July 21, 1848	9 Stat. 249 (ch. 108)	Dependent pensions
Act of January 29, 1887	24 Stat. 371 (ch. 70)	Service and dependent pensions
<b>Civil War (March 4, 1861-April 11, 1865)<sup>1</sup></b>		
Act of July 22, 1861	13 Stat. 270	Invalid pensions
Act of July 14, 1862	12 Stat. 566 (ch. 166)	Invalid and dependent pensions
Act of July 4, 1864	13 Stat. 387 (ch. 247)	Invalid and dependent pensions

***Appendix C, continued.***

<b><u>Legislative Enactment</u></b>	<b><u>Citation</u></b>	<b><u>Benefit</u></b>
Act of June 6, 1866	14 Stat. 56 (ch. 106)	Invalid and dependent pensions
Act of July 27, 1868	15 Stat. 235 (ch. 264)	Invalid pensions
Act of March 3, 1873 (Consolidation Act)	17 Stat. 566 (ch. 234)	Invalid pensions
Act of January 25, 1879 (Arrears Act)	20 Stat. 265 (ch. 23)	Invalid and dependent pensions retroactive to date of death or discharge
Act of June 27, 1890	26 Stat. 182 (ch. 634)	Invalid, dependent, and service pensions
Act of September 2, 1958 (Pub. L. 85-857) (Recodification Act)	72 Stat. 1105	Provided service pensions to surviving Confederate veterans

**Indian Wars (1812-98)<sup>3</sup>**

Act of April 10, 1812	2 Stat. 704 (ch. 54)	Wabash River Campaign (Indiana) [1811-12]
Act of July 27, 1892	27 Stat. 281 (ch. 277)	Black Hawk War (Illinois), 1832-42; Cherokee disturbances, 1832-42; Seminole War (Florida), 1832-42; Creek War, 1832-42
Act of June 27, 1902	32 Stat. 399 (ch. 1156)	Seminole War (Fla., Ga.), 1817-18; Fever River Indian War (Ill.), 1827; Sac and Fox War (Mich., Ill.), 1831; Sabine Indian disturbances, 1836-37; Cayuse War (Pacific coast), 1847-48; Seminole War (Florida), 1842-58; Texas & New Mexico War, 1849-56; Calif. Indian disturbances, 1851-52; Utah Indian disturbances, 1851-53; Oregon & Washington Territory Indian Wars, 1851-

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***Appendix C, continued.***

<b><u>Legislative Enactment</u></b>	<b><u>Citation</u></b>	<b><u>Benefit</u></b>
Act of May 30, 1908 (Pub. L. 60-170)	35 Stat. 553 (ch. 230)	Texas Indian depredations, 1855-60
Act of March 4, 1917 (Pub. L. 64-400)	39 Stat. 1199 (ch. 189)	Texas Indian depredations, 1859-61; Campaign in Oregon, Idaho, New Nevada, and California, 1865-68; Sioux Campaign (Minnesota, Dakotas, 1862-63, Wyoming, 1865-68; Cheyenne Campaign (Kansas, Colorado, Indian Territory), 1867-69; Modoc War, 1872-73; Apache Campaign (Arizona, New Mexico), 1873; Kiowa Campaign (Kansas, Colorado, Texas, New Mexico, Indian Territory), 1874-75; N. Cheyenne and Sioux Campaign, 1876-77; Nez Perce War, 1877; Bannock War, 1878; N. Cheyenne Campaign, 1878-79; Black Hawk War (Utah), 1865-77; Ute Campaign (Utah, Colorado), 1879-80; Apache Campaign (Arizona, New Mexico), 1885-86; Sioux Campaign (South Dakota), 1890-91
Act of March 3, 1927 (Pub. L. 69-723)	44 Stat. 1361 (ch. 320)	Invalid pensions for service between January 1, 1817 and December 31, 1898; dependent pensions; service pensions from age sixty-two

**Spanish-American War and Philippine Insurrection (April 21, 1898-July 04, 1902)<sup>1</sup>**

Act of April 18, 1900	31 Stat. 136 (ch. 244)	Service and dependent pensions
Act of July 16, 1918 (Pub. L. 65-199)	40 Stat. 903 (ch. 153)	Service and dependent pensions
Act of June 5, 1920 (Pub. L. 66-256)	41 Stat. 982 (ch. 245)	Invalid and service pensions
Act of September 1, 1922 (Pub. L. 67-294)	42 Stat. 834 (ch. 302)	Dependent pensions; service pensions to Army nurses
Act of August 23, 1935 (Pub. L. 74-312)	49 Stat. 729 (ch. 621)	provided for medical care of all invalid veterans (free to the indigent)

*Appendix C, continued.*

- <sup>1</sup> The dates given here for each conflict are those established by Congress for the purpose of defining eligibility for the benefits granted to veterans.
- <sup>2</sup> The Treaty of Ghent was signed December 24, 1814 but hostilities continued until news of the peace treaty arrived in the United States after the Battle of New Orleans.
- <sup>3</sup> The Treaty of Guadalupe Hidalgo represents the end-of-war date.
- <sup>4</sup> Unlike the other conflicts listed here, Congress did not adopt a formal declaration of war for any of the Indian conflicts fought during the nineteenth century.

Source: Based on information from William Henry Glasson, *Federal Military Pensions in the United States* (New York: Oxford University Press, 1918), 9-122; Robert Mayo, *The Pension Laws of the United States, Including Sundry Resolutions of Congress, from 1776 to 1833: Executed at the War Department, with an Appendix, Containing the Opinions of Attorneys General of the United States, and the Rules and Regulations adopted by Secretaries of War, Relative to the Execution of Those Laws* (Washington, D.C.: Globe Office, 1833), v-x, 1-152, Appendix 1-4; John William Oliver, "History of the Civil War Military Pensions, 1861-1885," *Bulletin of the University of Wisconsin*, no. 844 [History Series, vol. 4, no. 1], 1917, 1-89; United States, House of Representatives, Committee on Pensions, *Veterans' Law: Chronological Résumé of Veterans' Laws* (Washington: GPO, 1939); and *United States Statutes at Large*.

*Appendix D. Key Veterans Legislation for Conflicts After 1914*

<u>Legislative Enactment</u>	<u>Citation</u>	<u>Effect</u>
<b>Mexican Border Period (May 9, 1916-May 5, 1917)<sup>1</sup></b>		
Act of 12/24/1970 December 24, 1970 (Pub. L. 91-588)	84 Stat. 1580	Extended existing benefits to veterans of this conflict
<b>World War I (April 6, 1917-July 2, 1921)<sup>1</sup></b>		
War Risk Insurance Act Amendments of 1917 (Pub. L. 65-90)	40 Stat. 398 (ch. 105)	Established pensions for U.S. military personnel
Vocational Rehabilitation Act (Pub. L. 65-178)	40 Stat. 617 (ch. 157)	Established Federal Board of Vocational Education to provide training
World War Adjusted Compensation Act (Pub. L. 68-120)	43 Stat. 121 (ch. 157)	Provided adjusted compensation for active service
World War Veterans Act of 1924 (Pub. L. 68-242)	43 Stat. 607 (ch. 320)	Established Veterans Bureau; provided for medical care and vocational rehabilitation
<b>World War II (December 7, 1941-December 31, 1946)<sup>1</sup></b>		
Servicemens Readjustment Act of 1944 (Pub. L. 78-346)	58 Stat. 284 (ch. 268)	Established educational benefits, loans, and unemployment allowances
<b>Korean Conflict<sup>2</sup> (June 27, 1950-January 31, 1955)<sup>1</sup></b>		
Veterans Readjustment Assistance Act of 1952 (Pub. L. 82-550)	66 Stat. 663 (ch. 875)	Extended provisions of 1944 act to Korean War veterans

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***Appendix D, continued.***

<b>Enactment</b>	<b><u>Citation</u></b>	<b><u>Effect</u></b>
<b>Vietnam War<sup>2</sup> (August 5, 1964-May 7, 1975)<sup>1</sup></b>		
Vietnam Era Veterans Readjustment Assistance Act of 1972 (Pub. L. 92-540)	86 Stat. 1081	Provided vocational rehabilitation and educational assistance
Vietnam Era Veterans Readjustment Assistance Act of 1974 (Pub. L. 93-508)	88 Stat. 1578	Expanded employment rights for veterans

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<sup>1</sup> The dates given here for each conflict are those established by Congress for the purpose of defining eligibility for the benefits granted to veterans.

<sup>2</sup> Congress never adopted a formal declaration of war for these conflicts.

Source: Based on information from United States Congress, House of Representatives, Committee on Pensions, 77th Congress, Committee on Pensions, *Veterans' Laws: Chronological Résumé of Veterans' Laws* (Washington: GPO, 1939), 24-54; *United States Statutes at Large*; and *United States Code Annotated*, Title 38.

*Appendix E. Court Cases Establishing Veterans Benefits  
and Judicial Review Rights, 1793-1988*

*Hayburn's Case*, 2 Dallas (2 U.S.) 409, 1 L. Ed. 436 (1793)

*United States v. Yale Todd*, (U.S. August 1793)

*Ex Parte Chandler*, (U.S. February 1794)

*Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 2 L. Ed. 60 (1803)

*Kendall v United States ex rel Stokes*, 12 Peters (37 U.S.) 524, 9 L. Ed. 1181 (1838)

*Decatur v. Paulding*, 14 Peters (39 U.S.) 497, 10 L. Ed. 559 (1840)

*United States v. Ferreira*, 13 Howard (54 U.S.) 40, 14 L. Ed. 42 (1851)

*Walton v. Cotton*, 19 Howard (60 U.S.) 355, 15 L. Ed. 658 (1856)

*Mays v United States*, 4 Ct. Cl. 218 (1868)

*United States v. Alexander*, 12 Wallace (79 U.S.) 177, 20 L. Ed. 381, 7 Ct. Cl. 205 (1870)

*Daily v. United States*, 17 Ct. Cl. 144 (1881)

*United States ex rel Burnett v. Teller*, 17 Otto (107 U.S.) 64, 27 L. Ed. 353 (1882)

*Stanley v. Schwalby*, 162 U.S. 255, 40 L. Ed. 960 (1896)

*Crouch v. United States*, 266 U.S. 180, 69 L. Ed. 233 (1924)

*Silberschein v. United States*, 280 Fed. 917 (E.D. Mich. 1922)

*Silberschein v. United States*, 266 U.S. 221, 69 L. Ed. 256 (1924)

*Sprencel v. United States*, 47 F.2d 501 (5th Cir. 1931)

*Lynch v. United States*, 292 U.S. 571 (1934)

*United States v. Sellers*, 75 F.2d 623 (5th Cir. 1935)

*Smith v. United States*, 83 F.2d 631 (8th Cir. 1936)

*Morgan v. United States*, 115 F.2d 426 (5th Cir. 1940)

*Siegel v. United States*, 87 F. Supp. 555 (E.D. N.Y. 1949)

*Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967)

*DiSilvestro v. United States*, 405 F.2d 150 (2d Cir. 1968)

*Goldberg v. Kelly*, 397 U.S. 254 (1970)

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***Appendix E, continued.***

*Johnson v. Robison*, 415 U.S. 361, 39 L. Ed. 2d 389 (1974)

*Taylor v. United States*, 385 F. Supp. 1034 (N.D. Ill. 1974)

*Mathews v. Eldridge*, 424 U.S. 319 (1975)

*Plato v. Roudebush*, 397 F. Supp. 1295 (D. Md. 1975)

*Fielder v. Cleland*, 433 F. Supp. 115 (E.D. Mich. 1977)

*Moore v. Johnson*, 582 F.2d 1228, 1232 (9th Cir. 1978)

*Wayne State University v. Cleland*, 590 F.2d 627 (6th Cir. 1978)

*Merged Area X (ed.) etc. v. Cleland*, 604 F.2d 1075 (8th Cir. 1979)

*Evergreen State College v. Cleland*, 621 F.2d 1002 (9th Cir. 1980)

*The University of Maryland v. Cleland*, 621 F.2d 98 (4th Cir. 1980)

*Devine v. Cleland*, 616 F.2d 1080, 1083 (9th Cir. 1980)

*de Magno v. United States*, 636 F.2d 714 (D.C. Cir. 1980)

*Arnolds v. Veterans' Administration*, 507 F. Supp. 128 (N.D. Ill 1981)

*American Federation of Government Employees v. Nimmo*, 536 F. Supp. 707 (E.D. Va. 1982)

*Rosen v. Walters*, 719 F.2d 1422 (9th Cir. 1983)

*Walters v. National Association of Radiation Survivors*, 473 U.S. 305 (1985)

*Hartmann v. United States*, 615 F. Supp. 446 (E.D. N.Y. 1985)

*Winslow v. Walters*, 815 F.2d 1114 (7th Cir. 1987)

*Mathes v. Hornberger*, 821 F.2d 439 (7th Cir. 1987)

*McKelvy v. Turnage*, 485 U.S. 535 (1988)

*Traynor v. Turnage*, 485 U.S. 535 (1988)